Public Utilities

FORTNIGHTLY



November 24, 1938

THE RAILROAD CRISIS. PART I.
By Harold D. Koontz

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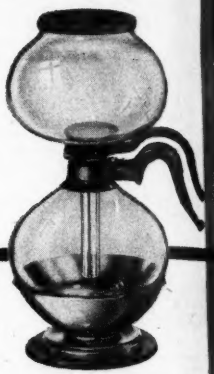
Canadian Objections to the St. Lawrence Project
By Harold Dingman

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Can Planned Economy Work in the Utility Business?
By James C. De Long

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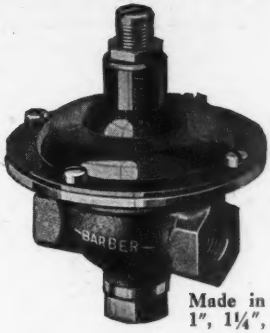
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Public Utilities Fortnightly

VOLUME XXII *November 24, 1938* NUMBER 11

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¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

WELL, the elections have gone with the wind and now comes the season for Thanksgiving and for figuring out just exactly where we stand. The politicians, of course, are either bragging about offices captured or explaining and bemoaning the ones that "got away"—according to their respective fortunes. The folks in California have apparently decided that ham and eggs will come only from hard work—or Washington. The third party movement in the Northwest seems to have suffered somewhat from an electoral frost.

BUT these are passing phenomena. The more substantial national issues are no nearer solution than they were before the 8th day of November: government spending, regional planning, the railroads, and so forth. The voice of the people has spoken only as to the identity of that particular set of Congressmen who will occupy the seats of the mighty for at least two more years. It remains for the political analysts to figure out, in view of the election returns, just how the new Congress is going to pass on these important questions, if it passes on them at all.



HAROLD DINGMAN

The Dominion may like the warmed over St. Lawrence deal, but it's still spinach to Ontario.

(SEE PAGE 690)

AND there are other factors, besides the greater amount of independence expected from the next congressional session, which bear on the prospects of our future government policy. Take the St. Lawrence seaway-power project—a matter dear to the heart of President Roosevelt. Will he be able, in these last two years of the New Deal's second term of office, to overcome the obstacles which have so far thwarted a binding international agreement on this matter with the Dominion of Canada? It will be readily recalled that the St. Lawrence treaty was blocked first in the United States Senate and more recently by a reversal of political sentiment in the Province of Ontario. What is the situation today?

WASHINGTON commentators will perhaps predict a troubled course for the new Hull-King seaway draft if and when the President sends the same for ratification by an increasingly rebellious Senate. But will it even get that far? Presumably the President would not even hazard a Senate vote unless he were first assured of favorable action across our northern border. For such a reëxamination of the situation at Ottawa (with liberal side



JAMES C. DE LONG

Without planned economy in other commercial fields, will it still work with the utilities?

(SEE PAGE 695)

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glances at Toronto), we called upon HAROLD DINGMAN, Parliamentary correspondent for *The* (Toronto) *Globe and Mail* in the press gallery of the House of Commons at Ottawa. His article in this issue on the Canadian objections to the St. Lawrence project (starting page 690) is the result.

MR. DINGMAN is a veteran Canadian newspaper man who has seen prior service with the *Calgary Albertan* and *Vancouver News-Herald*. In 1934 he joined the Toronto *Globe*, which has since been merged with the old *Mail & Empire* to become the present *Globe and Mail*. His journalistic work has always been associated with Canadian politics.

WE have the word of President Roosevelt himself that he will try to do something about the railroad situation through remedial legislation in the coming session. None will deny the need for some remedy, but unanimity ends right there. Because the railroad crisis is certain to arouse much discussion from now on, PUBLIC UTILITIES FORTNIGHTLY, ever alert to its responsibility for making its readers the best informed people in the whole world upon questions lying within or near its editorial field, decided to have this entire railroad mess analyzed by an expert—now, before the serious as well as foolish talk about it starts cluttering up the newspapers this winter.

AND so we present in this issue the first of a series of three articles by HAROLD D. KOONTZ (A. B. Oberlin, '30; M. B. A. Northwestern, '31; Ph. D. Yale, '35), who is associate professor of economics at Colgate University. In addition to previous teaching experience at Duke and Toledo universities, DR. KOONTZ was a member of a cost study staff of the New York, New Haven & Hartford Railroad Company in 1936. At his present post he specializes in regulatory economics, including utilities and transportation.

CERTAINLY the next Congress is going to hear more about regional planning, whether in the form of a new "seven TVA" bill or some less pretentious proposal for superimposing upon the map of the United States a batch of supernumerary boards for studying economic problems according to watersheds, postal zones, Army corps areas, or other regional divisions. And so again we seize this opportunity to present a timely discussion on regional planning by JAMES C. DE LONG, well-known financial editor, who was recently made vice president of the board of our esteemed contemporary, *Financial World*. Born in Indiana, MR. DE LONG was graduated (A. B.) from the University of Michigan School of Business Administration, and spent several years abroad in the American consular service. For the last decade he has devoted himself to economic research, editorial and financial writing.



HAROLD D. KOONTZ

Railroads are getting nowhere fast in trying to make ends meet.

(SEE PAGE 675)

ONE thought that always bothers us as we listen to or read the convincing arguments about regional planning by such stout proponents as, say, Stuart Chase, is where are we going to find room for these new authorities, boards, and what not, and how are we going to afford them? It seems perfectly logical, even if somewhat coldly efficient, to say, for instance, that we need a new board to consider New England as a whole instead of six state boards to consider it according to state units. But invariably your New England board, once in existence, will divide and subdivide itself within its own framework ("the efficiency of departmentalization," as the teachers of government call it), and the whole thing is liable to end up with more boards, committees, divisions, and many more officeholders. If we could only find some way of putting to death one set of boards every time we bring forth a new one, the price of progress might be a little less burdensome.

WITH our present crazy-quilt structure of overlapping zones, whereby two and three Federal agencies are often seen attempting to do the same job in the same place, we may well wonder whether we do not need a little planning of regions as much as we need regional planning.

THE next number of this magazine will be out December 8th.

The Editors

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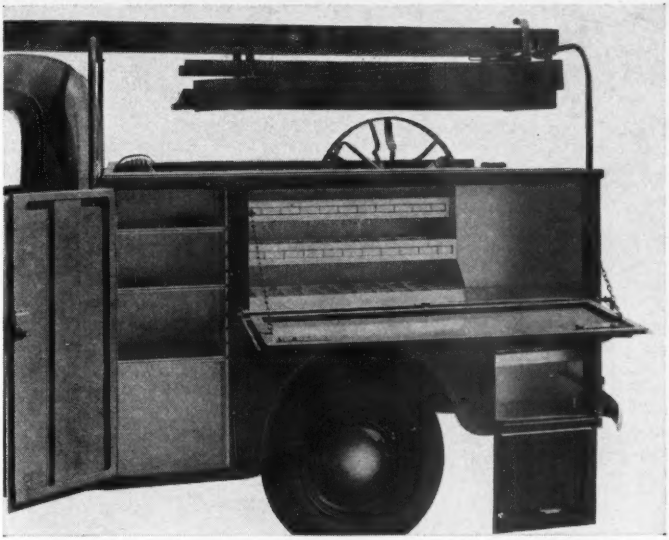
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Transit Journal.

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M. W. CLEMENT
President, Pennsylvania Railroad.

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FREDERICK E. WILLIAMSON
President, New York Central System.

"It is difficult to understand on what theory railroads can be expected to maintain sufficient credit to attract investors if there exists any widespread attitude that railroad security owners are not entitled to a reasonable return on their money."

PHILIP CABOT
Professor, Graduate School of Business Administration, Harvard University.

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The Financial World.

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DR. E. G. NOURSE
Director, Institute of Economics, Brookings Institution.

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The United States News.

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A. R. COLBERT
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WALTER M. PIERCE
U. S. Representative from Oregon.

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MORRIS S. TREMAINE
State Controller of New York.

"But if this [St. Lawrence] power should be developed, it seems to me the government should go no further than to build the initial plants and lease the power to distributors with proper safeguards, as the cheapest and most practical way of getting a reduced cost to the consumer."

RALPH E. FLANDERS
President, Jones & Lamson Machine Company.

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Editor, The Emporia Gazette.

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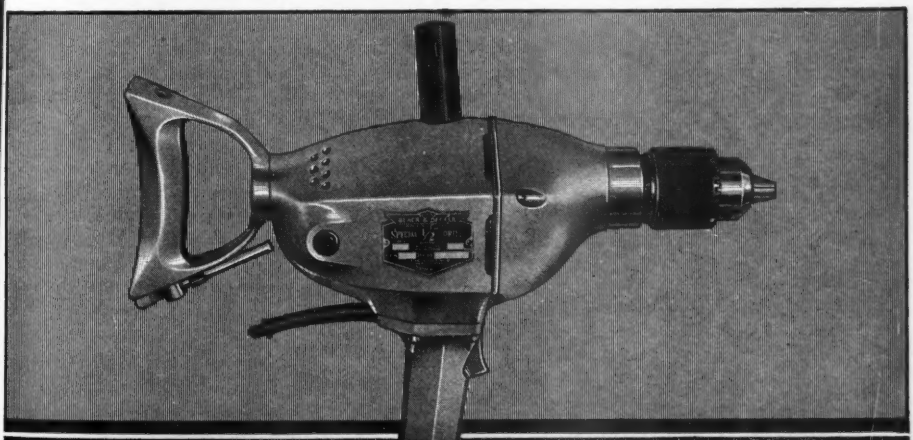


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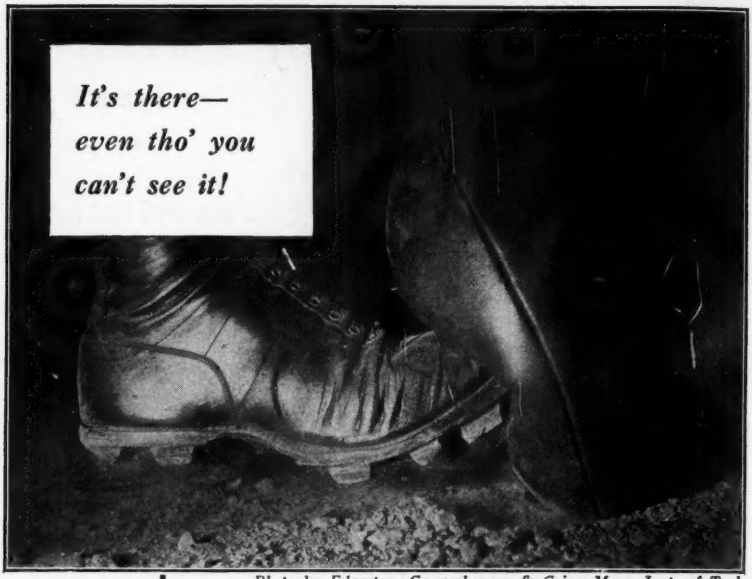
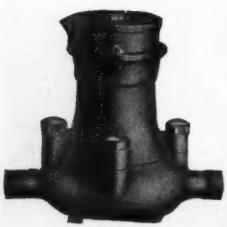


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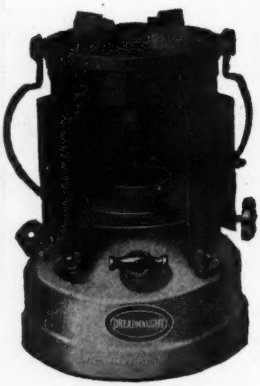
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- POWERFUL HYDRAULIC TRUCK BRAKES
- *FOUR-SPEED TRANSMISSION
- HEAVY, RIGID FRAME
- *FULL-FLOATING REAR AXLE

*Heavy-Duty models

NEW 1939

CHEVROLET TRUCKS

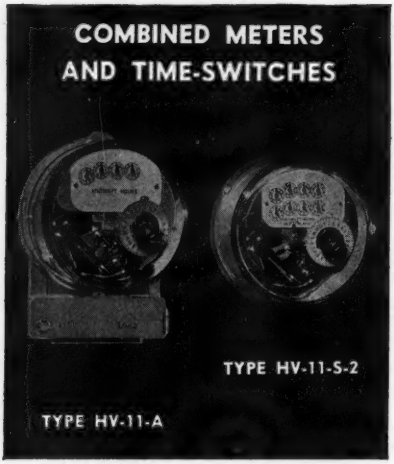
CHEVROLET brings you the greatest truck news of the year—the most complete and advanced line of low-priced trucks in the history of modern truck transportation! Included are new Cab-Over-Engine models, *entirely* designed and *entirely* built by Chevrolet, that offer amazing new *double savings* . . . the combination of extra big load space and unexcelled Chevrolet operating economy! Whatever your truck requirements—in style, size or body type—there's a new 1939 Chevrolet truck that will haul the load or deliver the goods for less.

See these new trucks. Ask for a demonstration. Learn why they are *first* in performance; *first* in economy; *first* in long life and dependability qualities . . . and *first* in all-round truck value!

CHEVROLET MOTOR DIVISION, *General Motors Sales Corporation*, DETROIT, MICHIGAN

"DESIGNED FOR THE LOAD CHEVROLET TRUCKS POWERED FOR THE PULL"

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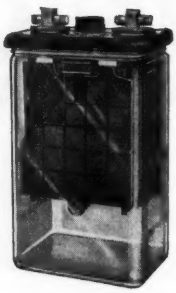
SANGAMO TYPE HV METERS

The Type HV instruments combine a standard singlephase HF watthour meter with a synchronous motor time-switch—in various switching arrangements—supplied with or without two-rate register. Low cost installation and minimum space requirements make them desirable for metering and controlling off-peak loads.

Modern Meters for Modern Loads!

SANGAMO ELECTRIC COMPANY
SPRINGFIELD, ILLINOIS

We've Spent Fifty Years Learning to Build Batteries Like This



IT has been half a century since this company first began the commercial production of storage batteries. And one of the first types produced was the Exide Chloride.

Is it any wonder then, that with this long experience behind it, the Exide Chloride should be one of the most widely accepted batteries used in stationary service?

Bulletin 204 describes the unique construction of this remarkable battery. Write for a copy and learn why it is the choice of engineers everywhere.

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CHLORIDE BATTERIES

THE ELECTRIC STORAGE BATTERY CO.
The World's Largest Manufacturers of Storage Batteries for Every Purpose
PHILADELPHIA
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The PITTCO STORE FRONT CARAVAN *Returns!*



Another chance to tie up with this potent builder of new lighting customers! Another opportunity to sell more current by showing the merchants and property-owners in your territory the advantages of modern, business-building store front lighting and design.

The Pittco Store Front Caravan, with twelve scale models of modern, properly illuminated store fronts, is going to cover the entire country *again.* If it visited your territory on its first trip, you'll know how helpful it was to you in educating your prospects to a better appreciation of adequate store front illumination.

This time, the Caravan will cover your territory more broadly than before. Having presented its store front exhibit in all the metropolitan areas on its previous tour, it will this time present showings of its scale models in the more important *smaller* communities throughout your territory . . . giving every merchant and every property owner a chance to see it.

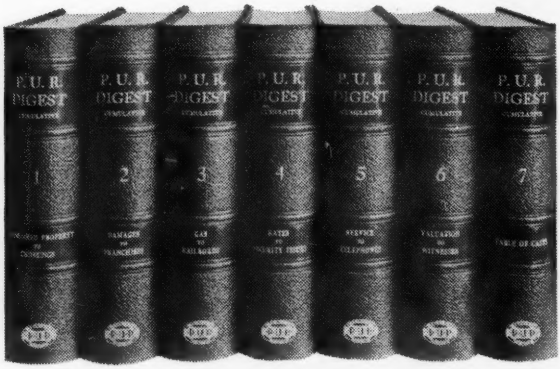
Watch for the return of the Pittco Caravan . . . and tie up with it in your sales efforts. Your nearest Pittsburgh Plate Glass Co. branch can give you specific information as to when it will revisit you.

Paint ◇ PITTSBURGH ◇ *Glass*
PLATE GLASS COMPANY

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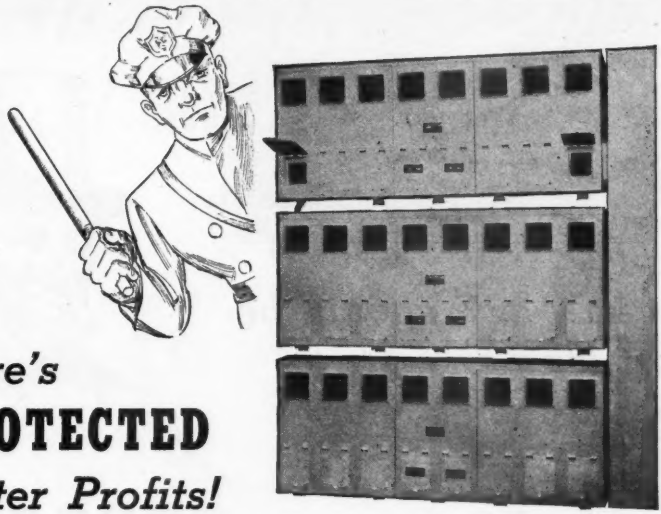
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A GREAT SERVICE

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Here's
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Meter Profits!

WALKER *Gang Metering Cabinets*

WECO ATLANTA

• ELIMINATE CURRENT THEFT
• SLASH INSTALLATION COSTS

. . . they offer positive protection for your meters against tampering and current theft . . . seal in your profits for all time!

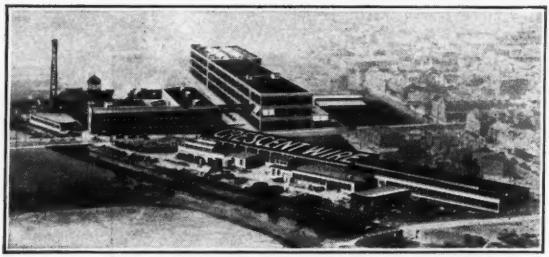
. . . they cut material and labor costs on installations by affording a neat, compact, time-saving means of mounting all your meters and customer switches together in one spot, with bus-bar mains and connecting troughs already in cabinet.

Cabinets can be furnished in steel or aluminum, extra heavy grade . . . horizontal or vertical style, up to any number of gangs you wish. Types for both indoor and outdoor service. Cabinets also built to specifications. Write for Catalogue.

ILLUSTRATED: 24 Gang Panel, with connecting bus trough attached. Glass faces facilitate readings. Plenty of wiring space.

WALKER ELECTRICAL CO.
ATLANTA GEORGIA

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LINCOLN SAID:

"A man's legs should be just long enough to reach the ground"

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In over 50 years, CRESCENT has grown in size and scope— *without becoming unwieldy...*

Crescent's large, modern, efficient, plant is its only plant — producing nothing but wire and cable for all electrical needs. With sales representatives and adequate warehouse stocks blanketing the country in strategic locations, Crescent works closely through recognized electrical wholesalers to assure unexcelled service in supplying customers' requirements in electrical wire and cable.

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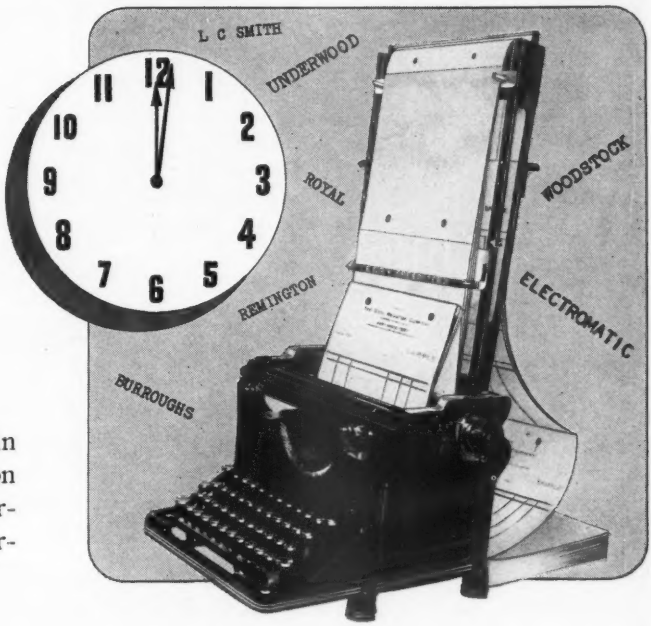
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INSULATED WIRE & CABLE CO. INC
TRENTON, NEW JERSEY

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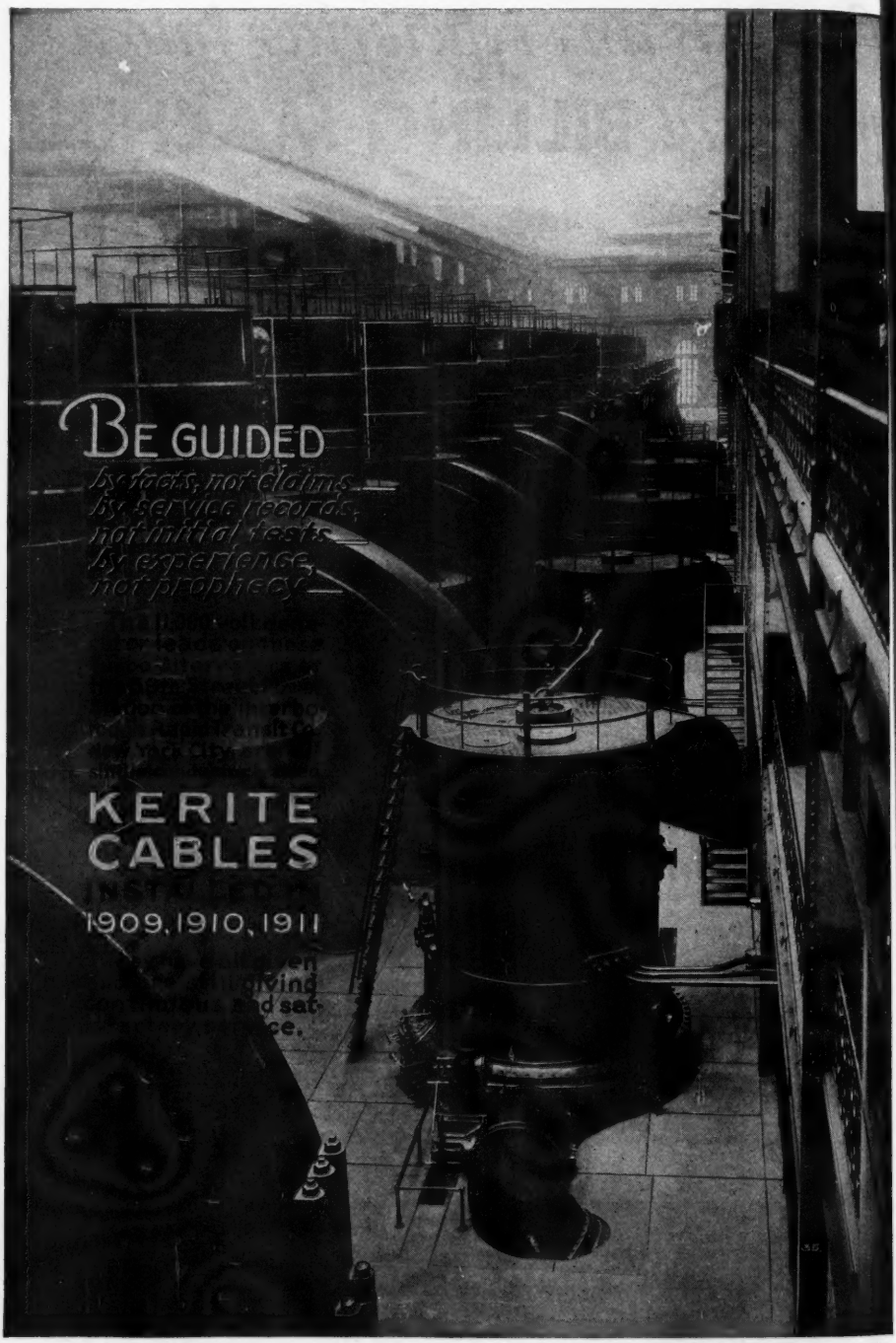
In writing multiple copy forms, sharp savings in time, labor and money are effected by the use of the Egry Speed-Feed. All the time of the operator is productive; output is increased 50% or more; costly one-time (pre-inserted) carbons, loose forms and carbons and other outdated methods are eliminated. Uses Egry continuous forms, with all copies held in perfect alignment. Up to 300 (and more) sets of forms can be written with a single set of carbons. No other device remotely approaches the Speed-Feed in ease of operation, in speed, in efficiency, in economy, and all this at a cost of less than 2¢ per day. Investigate the advantages the Egry Speed-Feed brings to your business.

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SALES AGENCIES IN ALL PRINCIPAL CITIES

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"COULDN'T PASS UP DODGE TRUCKS AT THESE PRICES"

says Edward C. Reif, Berwyn, Ill.



"Famous Dodge Quality At Today's Price Means Big Savings"

Say Buyers Everywhere



DODGE 1½-TON STAKE—133" W. B. with 9 foot body and 159" W. B. with 12 foot body—Many extra-quality features make it today's big truck value. See your Dodge dealer.

MANY truck buyers are surprised when they find out how easy it is to buy a new Dodge truck right now. See your Dodge dealer at once.

This advertisement endorsed by the Engineering Department, DODGE Division of Chrysler Corporation, Manufacturers of Dependable Cars and Trucks.

LIBERAL BUDGET TERMS

Many are now operating Dodge trucks because of the low down payment and liberal terms made available to them.

DODGE TRUCK PRICES DELIVERED IN DETROIT

Including Federal Taxes. (Local, State Taxes Not Included)

½-TON 116" WHEELBASE CHASSIS **$475**

½-Ton Pickup—116" W.B.... $600
½-Ton Panel—116" W.B.... $695*
¾-Ton Express—120" W.B... $694

*Price includes front bumper, spare tire and tube. *Also includes rear bumper.*

1½-TON 133" WHEELBASE CHASSIS **$604**

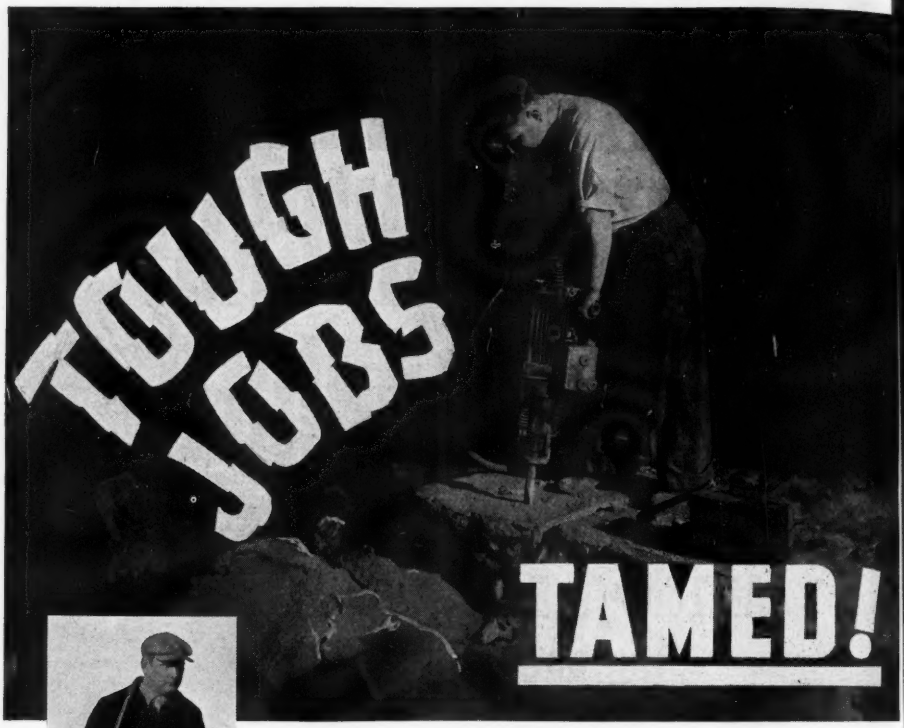
1½-Ton Chassis and Cab—133" W.B... $702
1½-Ton Stake—133" W.B..... $798
1½-Ton Stake—159" W.B..... $842

Price includes front bumper.

Other models of ½, ¾, 1, 1½, 2 and 3-ton, at correspondingly low prices. FOR DELIVERED PRICES IN YOUR LOCALITY SEE YOUR NEAREST DODGE DEALER.

SEE YOUR DODGE DEALER TODAY FOR A "SHOW-DOWN" OF VALUE

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ONE MAN

Transports it

SAME MAN

Operates it

THERE'S NO JOB TOO TOUGH FOR A BARCO . . .

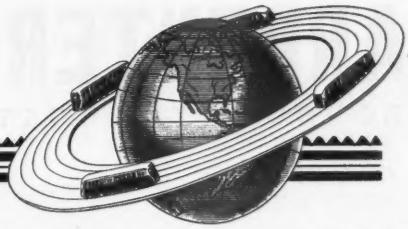
Once you let a Barco Portable Gasoline Hammer crack down on tough jobs, you will see it return its cost so quickly that it will amaze you. With interchangeable tools you can break concrete, cut asphalt, break frozen ground, dig post holes, drill, chisel, drive ground rods, tamp back-fill and economically carry on your other types of hammer work.

While you have it in mind, write for "Catalog No. 603" giving interesting construction details. Address:

BARCO MANUFACTURING CO.
1803 W. Winnemac Avenue, Chicago, Ill.

BARCO *Portable* GASOLINE HAMMER

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WHAT'S BACK OF COLLIER'S SERVICE?

7th *TRADITION...*

WHEN the women's magazines wore pig-tails . . . when the national weeklies counted their circulation by thousands rather than millions . . . when outdoor advertising was a smear on roadside barns . . . and long before radio uttered its first, thin wail . . . Transportation Advertising, under the able guidance of Barron Collier, was a full-bloomed medium carrying the parent campaigns of numerous products known to everybody today.



A Transportation Advertiser Since 1908

STREET RAILWAYS ADVERTISING CO., 745 Fifth Ave., New York

CARPENTER LIGHTS

ANNOUNCE TYPE "T&T"

YOU OWE YOUR MEN
THE BEST THERE IS

**FASTER—BETTER
LINE REPAIRS**

A 10 ft. spread of light atop a 40 ft. pole or a 20 ft. floodlight circle.

USES 2 #6 Dry Cell Batteries



MANUFACTURERS OF WORLD'S MOST POWERFUL HAND AND REPAIR CAR SEARCHLIGHTS

Sent on approval

CARPENTER MFG. CO.—CAMBRIDGE, MASS.

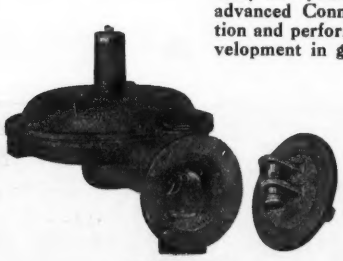
CONNELLY REGULATORS

for Precision and Dependability

Sixty two years' experience is back of these advanced Connelly designs. Their construction and performance rest upon sustained development in gas distribution apparatus.



DISTRICT
Regulator, Style LCD
Adjustable linkage connecting diaphragm and valve stem gives flexible control over a wide range. Built for high line pressures. Perfect operation under water.



SERVICE
Regulator, Style GV
Strength and simplicity mark this design. Only two moving parts—single unit double-guided stem gives perfect seating. Renewable stream line soft seat affords increased capacity. Two types: weight and spring loaded.



APPLIANCE
Regulator, Type DCS
Illustration shows spring loaded type. Also made in weight loaded type. Compact, sturdy and specially designed for accurate control. Made in all standard sizes.

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CONNELLY IRON SPONGE AND GOVERNOR COMPANY

CHICAGO, ILL. *New England Representative: T. H. Piser, Wellesley Hills, Mass.* **ELIZABETH, N. J.**

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Whatever You Haul...
LET INTERNATIONALS HAUL IT



The Indianapolis Power & Light Co., Indianapolis, now has this 3½ to 4½-ton International D-60, 179-inch wheelbase Truck with line-construction body working in its fleet. A power winch and pole derrick are also part of the equipment on this unit.

You get the real measure of International Trucks only when they go to work for you. And then you get a better demonstration of stamina and economy —*more performance per dollar*—than you have ever known before.

International builds every type of truck to meet every trucking requirement, from ½-ton units to powerful six-wheelers. In all, there are 30 models in 99 wheelbase lengths. And every one of them is *all-truck* in every inch and ounce of construction and design.

Every International is engineered for outstanding performance and styled for brilliant appearance. The illustration here shows the quality of International design. For performance, let the trucks speak for themselves, for *your* business on *your* job.

There are 242 Company-owned branches and thousands of dealers *at your service*, ready to give you a demonstration at your convenience.

INTERNATIONAL HARVESTER COMPANY

(Incorporated)

180 North Michigan Avenue, Chicago, Illinois

INTERNATIONAL TRUCKS

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You are invited to inspect a

TAYLOR STOKER

WATER COOLED

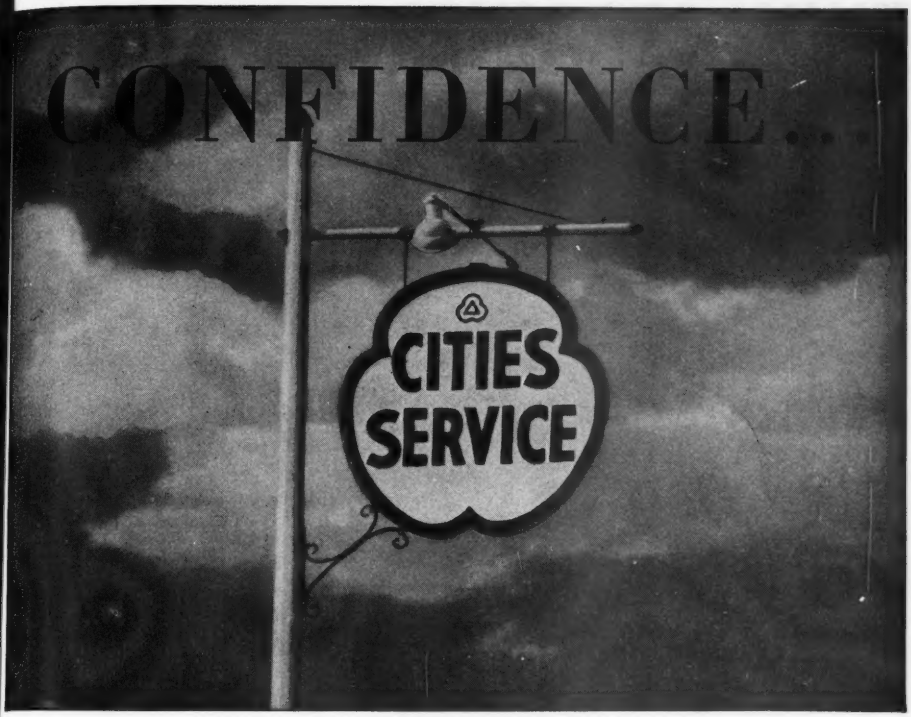
THIRTEENTH NATIONAL EXPOSITION OF POWER AND MECHANICAL ENGINEERING

Grand Central Palace

New York — December 5th to 10th

AMERICAN ENGINEERING COMPANY

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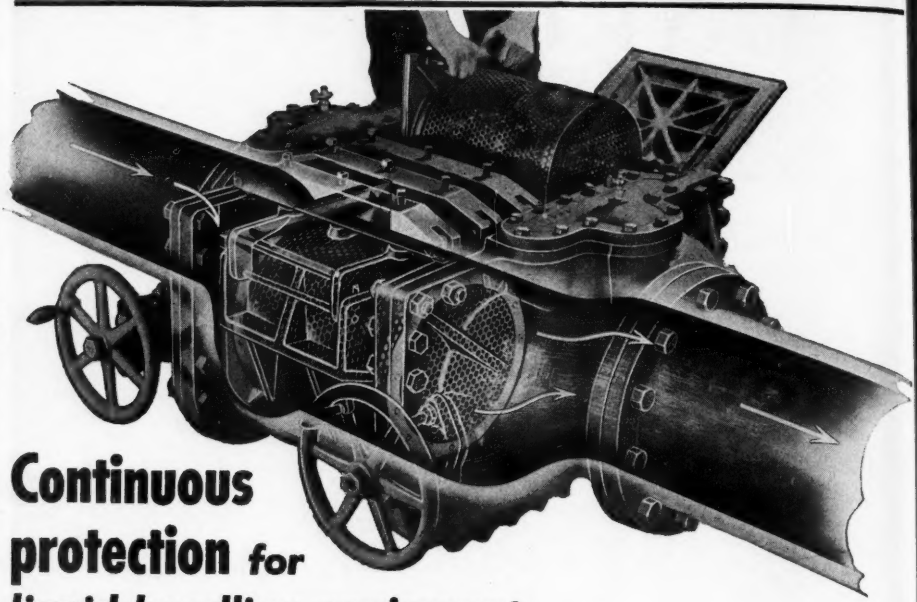
Whether You Buy A Tankful Of Gasolene Or A Carload Of Oil—You Can Be Sure That CITIES SERVICE PRODUCTS *Are Unsurpassed!*

THE QUALITY of Cities Service gasolenes, oils and greases is guarded every step of the way from the oil well to you. For Cities Service is a completely integrated unit in the oil industry, engaged in all phases of petroleum operation... production, transportation and refining. The finished products, backed by 74 years of refining experience, reach you through 15,000 reliable outlets. The Cities Service emblem is your guarantee of dependable products and efficient, courteous service.

CITIES SERVICE  *Serves A Nation!*

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TWIN STRAINERS *never stop!*



Continuous protection *for liquid-handling equipment*

Trash, debris, foreign matter *will* get into water and oil lines, and can cause all kinds of damage to equipment all the way from simple stoppage to breaking of delicate parts . . . unless it is stopped and eliminated. Very many utilities employ Twin Strainers — sometimes whole batteries of them — to secure complete freedom from this danger.

Twin Strainers never stop — one of the twin cylinders and strainer baskets is always in commission. When it becomes loaded with debris, a few turns of a handwheel diverts the flow to the companion cylinder which has in the meantime been cleaned and is ready for service.

Twin Strainer design permits of almost a straight-through flow, with the minimum of pressure drop. The many thousands of these units, in service for years, attest to the correctness of the Twin Strainer principle, and of the mechanical details.

Made in a complete range of sizes — larger sizes with motor-operated valves — also in single strainer types for water, oil or other liquids.

Full details upon request.

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ELLIOTT COMPANY

Accessories Department: JEANNETTE, PA.
District Offices in Principal Cities

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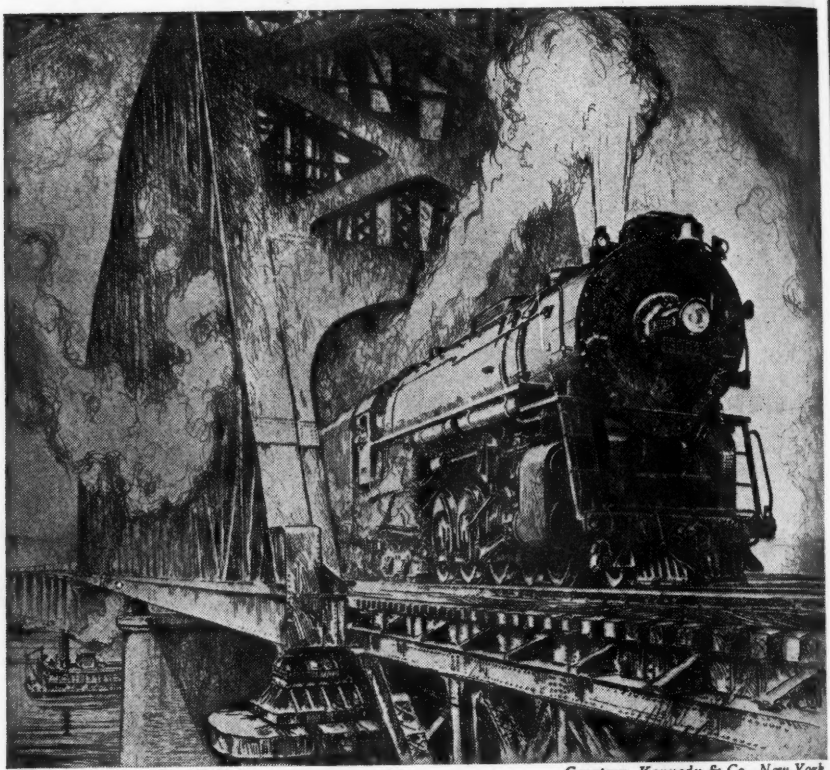
Utilities Almanack

NOVEMBER

24	Th	¶ *Second Annual Accounting Conference, EEI-AGA, will be held, Chicago, Ill., December 12-14, 1938.*
25	F	¶ *American Statistical Association will hold convention, Detroit, Mich., December 27-30, 1938.*
26	Sa	¶ *American Association for the Advancement of Science will open winter meeting, Richmond, Va., December 27-31, 1938.*
27	S	¶ *Tax Policy League will convene for session, Detroit, Mich., December 28-30, 1938.*
28	M	¶ *Alabama Independent Telephone Association opens meeting, Montgomery, Ala., 1938.* ¶ *American Institute of Electrical Engineers convenes, Miami, Fla., 1938.*
29	Tu	¶ *American Water Works Association, New York Section, will hold convention, New York, N. Y., December 29, 1938.*
30	W	¶ *Highway Research Board convenes for annual meeting, Washington, D. C., 1938.*

DECEMBER

1	Th	¶ *American Federation of Housing Authorities starts convention, Washington, D. C., 1938*
2	F	¶ *Mid-West Shippers Advisory Board will hold annual meeting, Chicago, Ill., January 3, 1939.*
3	Sa	¶ *American Engineering Council will hold convention, Washington, D. C., January 12-14, 1939.*
4	S	¶ *Exposition of Chemical Industries opens, New York, N. Y., 1938.*
5	M	¶ *Florida Telephone Association starts annual convention, Ocala, Fla., 1938.* ¶ *National Exposition of Power & Mech. Engineering opens, New York, N. Y., 1938.*
6	Tu	¶ *Associated General Contractors & American Road Builders Asso. will hold conventions and exhibition of equipment, San Francisco, Calif., March 5-11, 1939.*
7	W	¶ *American Water Works Association, Canadian Section, will hold convention, Toronto, Ont., April 12-14, 1939.*



From an etching by Otto Kuhler *Courtesy, Kennedy & Co., New York*

Power

Public Utilities
FORTNIGHTLY

VOL. XXII; No. 11 NOVEMBER 24, 1938

The Railroad Crisis

PART I. *Basic Features of the Problem*

After analyzing the fundamental causes of the predicament of the rail carriers and indicating some possible ways out, the author declares that the time is ripe for moulding an enlightened public opinion which will force a sensible government policy toward the railroads.

BY HAROLD D. KOONTZ

WITH more railroad mileage in receivership or trusteeship than ever before, and with even more bankruptcies threatened as the result of operating deficits on most of the railroads in the first months of 1938, the condition of the railroad industry is indeed critical. While railroad traffic fell to a lower level in 1932 than is indicated for 1938, net income for most railroads was lower in the first quarter of 1938 than in any of the worst quarters of 1932 and 1933. The railroads, not having tasted prosperity since 1929, are hardly in as good a condition to withstand shrinking income as they were in 1932. Even in 1936 and 1937, when other industries had a brief glimpse of prosperity, the Class I railroads (those with annual operating revenues over $1,000,000) earned, according to the Interstate Commerce Commission, less than 3 per cent on the property used.

While this writer does not believe that railroad existence is threatened or that solution of the railroad problem is hopeless, a realistic examination of the basic features of the problem is necessary. If examination of these factors which explain the present railroad crisis shows any possible way out, that way should be followed vigorously. The problem is one the solution of which cannot be expected from railroad managements alone. Having bound

the railroads hand and foot in a network of regulation, some responsibility for the present crisis must be laid at the door of the government.

In presenting this analysis of the railroad problem, it is the purpose of the writer to deal first with the factors which lie at the bottom of the crisis and indicate some ways to meet these difficulties. In a second article, the question of government policy in connection with the railroads will be treated. There the writer will point out what seems to him to be ways by which the government can help solve the problem. What the government will do, no one can foretell. It is to be hoped, however, that future Congresses will face the problem with more realism and foresight than were apparent in the last Congress.

What Lies at the Bottom of the Crisis?

As much as anything else, the present railroad crisis is due to a shrinkage in the volume of traffic. Revenue ton-miles dropped from 450 billion in 1929 to 235 billion in 1932 and 360 billion in 1937, with prospects of 1938 ton-miles being closer to 1932 than to 1937. Passenger-miles have dropped from 31 billion in 1929 to 16 billion in 1932 and 24 billion in 1937. Even more signifiicant is the fact that in 1920 nearly 47 billion passenger-miles were carried. While this is only a part of the story, the reduction in revenue per ton-mile and passenger-mile also being impressive, it does serve to show that the decline in railroad volume has been tremendous.

Although much of the loss in railroad traffic at the present time is due to depressed conditions generally, reduction in ton-miles cannot be explained in this way alone. In March, 1937, the Federal Reserve Board index of industrial production stood at 118 per cent of the 1923-1925 base period, but railroad ton-miles amounted to only 99 per cent of the same base.[1] This hardly supports the contention, often advanced, that railroad traffic decline is merely a depression phenomenon.

Without a doubt, much of this traffic has been lost forever. The advent of the passenger automobile has irrevocably diverted much traffic. Some passenger traffic has also been lost to the airplane and the bus. Loss of freight traffic can be ascribed to many causes. Certain commodities, normally carried by rail, such as coal and lumber products, have been meeting competition from other products, so that even a return of normal business will probably not bring a greatly increased volume of this traffic.

In the case of some of the building materials, such as sand, gravel, and crushed stone, methods of production have changed so that railroads are not utilized for as much of the haul.

Increased competition by foreign raw material and food producers, as well as curtailment of local production, has had some effect on shipments for export by American producers. This has, of course, affected railroad tonnage.

An extremely important factor in reduction of railroad traffic has been the competition of other forms of transportation. This competition has been growing in importance. Data, given above, showing the spread between industrial production and ton-miles car-

[1] *Immediate Relief for Railroads,* House Doc. 583, 75th Cong., 3rd Sess., 1938, p. 26.

ried by the railroads, are indicative of this trend. In terms of tonnage originated, this spread has been estimated as equivalent to about 20 per cent of the total tonnage originated on Class I carriers in 1936.

In the case of certain commodities for which freight rate increases were recently asked, evidence on the diversion of traffic from rail to highway or water is illuminating.[2] Water-borne cement on the Great Lakes has more than tripled from 1922 to 1936. On the Mississippi river such shipments were many times what they were in 1922. Prior to 1926 approximately 90 per cent of the cement consigned to Cincinnati moved by rail, but by 1937 this head dropped to 30 per cent. In 1936 and 1937 shipping of farm products by rail, after making allowance for shifts in production, was 24 per cent less than in 1923-1925, and the shipments of live stock by rail, on the same basis, were 40 per cent less. While 49 per cent of the total production of sand, gravel, and crushed stone moved by rail in 1928, in 1936, only 24 per cent was so carried. A measurable part of the heavy building stones which moved by rail a few years ago is now transported by truck. Increased use of transport facilities other than rail is also notable in the case of petroleum, automobiles, canned goods, and paper products.

[2] All data drawn from General Commodity Rate Increases (1937) 223 Inters. Com. Rep. 657, and Fifteen Percent Case (1938) 226 Inters. Com. Rep. 41.

Rates

Competition for traffic has not only caused diversion of business from the railroads but has also resulted in a decline in rates. If the 360 billion ton-miles carried by Class I railroads in 1937 had earned an average revenue per ton-mile equal to that of 1929, the total freight revenue would have been around $3,900,000,000 instead of $3,400,000,000. If the passenger-miles of 1937 had returned an average revenue in that year equal to the 1929 passenger-mile average, the 1937 passenger revenue would have been $690,000,000 instead of $440,000,000. Thus net in-

TABLE I

Decline in Railroad Traffic, Average Revenue, and Net Income
(Class I Railroads)

Date	*Freight Revenue Ton-Miles (Billions)*	*Revenue Passenger-Miles (Billions)*	*Average Revenue Per Ton-Mile (Cents)*	*Average Revenue Per Passenger-Mile (Cents)*	*Net Income (Millions)*
1929	447.3	31.0	1.076	2.81	$896.8
1930	383.4	26.8	1.063	2.72	523.9
1931	309.2	21.9	1.051	2.51	134.8
1932	234.0	17.0	1.046	2.22	139.2*
1933	249.2	16.3	.999	2.01	5.9*
1934	268.7	18.0	.978	1.92	16.9*
1935	282.0	18.5	.988	1.93	7.5
1936	339.2	22.4	.974	1.84	164.6
1937	360.7	24.7	.935	1.79	98.5

*Deficit.
Source: Statistical Railroad Summary, *Railroad Data* (supp.), May 12, 1938.

come after fixed charges of Class I railways would have been around $850,000,000 in 1937, compared to the actual $98,500,000. The progressive decline of average revenue per ton-mile and per passenger-mile is shown in Table I. To be sure, some of the decline has been due to longer hauls, particularly of freight, in which the revenue per ton-mile has been less than for short-haul traffic.

Some of the competitive services which have taken traffic away from the rails and have driven rail rates down have advantages in the way of efficiency or convenience which cannot be met. This is probably the case with the private automobile and the pipe line. In the case of the water and highway carriers, however, their competition has taken place at rates which are not compensatory to them. In the Fifteen Percent Case, recently decided by the Interstate Commerce Commission, it was found that both water and highway carriers were operating in 1937 at levels as unprofitable as were the railroads.[3] A study of operations of 434 motor common carriers with 18,889 vehicles in 1937 revealed that in the first nine months of 1937 these carriers barely covered operating expenses. Thus it seems that the railroad rate problem is really a transportation rate problem and that those carriers competing with the railroads would be glad to see a general increase in rates.

Duplication in Transportation Services

CLOSELY allied with the problem of railroad traffic and rates is the question of duplication of transport services. Under a competitive system, such duplication would theoretically be removed by the weeding out of the inefficient. But, as transport facilities have been developed through encouragement of government subsidies, principles of competition are not allowed to operate.

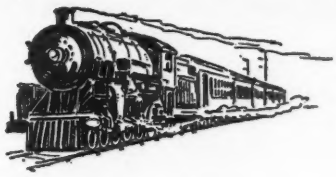
The substantial oversupply of commercial transportation facilities constitutes a serious national problem. One transportation economist believes that soon there is not likely to be enough commercial traffic to place all existing commercial carriers on a solvent basis.[4] The Brookings Institution found that in 1929 railroad track capacity was not used beyond 40 or 50 per cent, and that neither rolling stock nor terminals were used beyond 70 per cent of practical capacity. Pipe lines were used at less than 50 per cent of capacity in 1929 and inland waterways and highways were utilized less than one-third as much as might have been practical.[5]

ECONOMIC planning of transport facilities has been conspicuously lacking. While private management has aided in the overexpansion, much can be ascribed to government. Waterways and highways have been built and commercial carriers have been subsidized, even when there was little or no evidence that such facilities were needed. Not only is this duplication of services an economic loss, but it bears heavily on the taxpayers who furnish funds for the investment. It perhaps bears even more heavily on those private investors who have entered the

[3] (1938) 226 Inters. Com. Rep. 41, 69-74.

[4] See Cunningham, W. J., "Airways, Highways and Waterways," *Proceedings of Academy of Political Science*, v. 17, p. 145 (1937).

[5] Nourse, E. G. and others, *America's Capacity to Produce* (Washington: Brookings Institution, 1934), p. 374.



Legislation Affecting Costs

"LEGISLATION has . . . restricted the railroads in their attempts to reduce costs by improved facilities. Both working rules and many state laws require full crews of four or five or more men on trains, regardless of the need for the personnel. This is not to criticize the necessity of having trains adequately manned. But where small gasoline cars must have a full crew and electric locomotives must have 'firemen,' interference with efficiency is obvious."

transportation field with the reasonable hope that costs, rates, and traffic would reflect relative economic advantages of each mode of transport.

In the face of an oversupply of transportation services, the government is even now planning new waterways and greater subsidies to a merchant marine and to great superhighways. Is there any wonder that a transportation problem exists, or that the railroads, built for the most part from private capital, have a difficult time to operate profitably?

Labor

ONE of the fundamental causes of the present railroad crisis is the labor problem, both in terms of wages paid and obsolete and restrictive working rules. The railroads have recently announced that they intend to reduce railroad wages by 15 per cent. The labor unions have indicated their determination to fight this reduction and to strike if necessary.

Wages on the railroads are now at levels higher than in 1929, whether one considers hourly wages or annual compensation per employee. Table II shows these data and the trend in employment since 1929.

These figures cover all classes of railroad employees. Calculating compensation on the basis of groups of railroad employees is more striking. In 1936, where all employees paid on an hourly basis averaged 65.9 cents per hour, those so paid in maintenance of ways and structures averaged 46 cents per hour, while those in the train and engine service averaged 86.7 cents per hour. It is interesting that the lower paid group received overtime pay on 3.8 per cent of the hours paid for and only 0.16 per cent were hours not worked. In the train and engine service, 5.6 per cent of the hours paid for were overtime and 18.3 per cent were hours paid for though not worked. In the latter case, if hours not worked were eliminated, the average compensation

per hour worked, before the recent pay increases, would have been about $1.06 per hour.[6]

RECENT railroad wage history is interesting. After negotiations in 1931 and 1932 railroad labor accepted temporary cuts of 10 per cent, which reduction was returned in instalments from July, 1934, to April, 1935. By that time, wage rates were at predepression levels. After protracted negotiations in 1937, the carriers raised nontransportation employees' wages by 5 cents an hour and transportation employees' by 44 cents a day, or an equivalent of 5.5 cents per hour of an 8-hour day. As compared to 1932, when the temporary rate decrease was in effect, present hourly wage payments are on the average 20 per cent above that year. Even after one makes allowances for a decrease in employment which naturally followed these wage increases, the total wage bill for the railroads has increased by over $250,000,000 as compared to 1932. This does not take into account the increase in expense for retirement taxes and unemployment insurance taxes, an amount over $70,000,000 greater annually than previously charged by the railroads for their private pension plans.

Not only has the power of the train and enginemen resulted in higher wages for them than for any other branch of railroad employment, except that which might be termed executive, but these "aristocrats of labor" have been able to get railroad management to accept restrictive operating rules and methods of wage payment. They have also been able to get legislatures to pass "make-work" bills in the name of safety.

IN the train and engine services wage payments are made on a "dual" basis. Under this system a certain mileage and a period of time are fixed as the standard day. If a shorter time is taken to operate the standard mile-

[6] I. C. C., *Statistics of Railways*, 1936, p. S34. Note the difference between 65.9 cents an hour quoted here and the 69.1 cents an hour in Table II is due to exclusion here of employees not working on an hourly basis. "Hours not worked" include hours when employees are relieved from duty and payments made for excess mileage during straight time hours.

TABLE II

RAILROAD EMPLOYMENT AND COMPENSATION, 1929-37
(Class I, II, and III Railroads)

Date	*Average Number of Employees (Thousands)*	*Average Compensation Per Hour*	*Average Annual Compensation*
1929	1661	$0.666	$1,744
1930	1488	0.678	1,714
1931	1259	0.689	1,664
1932	1032	0.636	1,466
1933	971	0.629	1,445
1934	1008	0.635	1,508
1935	994	0.686	1,653
1936	1066	0.691	1,735
1937	1115	0.709	1,780
1938	905 (May)	0.765 (March)	....

Sources: I. C. C., *Statistics of Railways*, 1936, p. S114; *Railroad Data*, May 28, 1938 (supp.), and June 10, 1938; *Railway Age*, May 28, 1938.

¶ "As *much as anything else, the present railroad crisis is due to a shrinkage in the volume of traffic. Revenue ton-miles dropped from 450 billion in 1929 to 235 billion in 1932 and 360 billion in 1937, with prospects of 1938 ton-miles being closer to 1932 than to 1937. Passenger-miles have dropped from 31 billion in 1929 to 16 billion in 1932 and 24 billion in 1937.*"

age, any additional mileage is paid for pro rata.

The dual system is, of course, a piecework plan with a guaranteed minimum. Criticism does not lie so much with the system itself, but with the tendency under it for the size of the standard output to remain the same. With improved equipment, signal systems, and roadbed, the present mileage rates are obsolete. A great part of the increase in mileage traveled per hour is due to these improvements, and this rigid method of wage payments has not given betterments—the labor cost reducing benefits which these improvements have earned.

An important aspect of the railroad labor problem is the undue burden imposed by some working rules. Many of these rules are due to unjust practices in the past by management. Yet their operation does serve to cut down the efficiency of railroad labor. On some carriers telegraphers are paid for telephone calls to a dispatcher even when the call was made by a conductor. Wherever road service employees do any switching en route, any handling of trains at terminals, any "hostling," or any other service not normally performed on the run, they are entitled to a special allowance in addition to the daily minimum pay which is guaranteed to them.

On one New York carrier, operating rules required a switching crew to handle all switching of cars from one road to another at a junction point even though on one day a week only one or two cars were switched and the train crew could have done the switching. Since 1903 a rule has been in effect on western carriers whereby the number of cars or tonnage handled on a train on certain grades is limited unless a "helper" engine is used. This rule has been vigorously applied in spite of the increased tractive power of locomotives in the last three decades. Perhaps the most sensational case which resulted from an operating rule was in the Lehigh Valley awards made in 1937. Because the operating rule was interpreted to mean that a day's run ended when the train reached the terminal, over $241,000 was awarded to fifty Lehigh Valley trainmen and enginemen to give a full day's pay for the short trip from Pennsylvania station in New York to the yards in Long Island, a distance of about 4 miles.

Legislation has also restricted the railroads in their attempts to reduce costs by improved facilities. Both working rules and many state laws require full crews of four or five or more men on trains, regardless of the need for the personnel. This is not to criticize the necessity of having trains ade-

quately manned. But where small gasoline cars must have a full crew and electric locomotives must have "firemen," interference with efficiency is obvious.

SEVERAL states have bills to limit the length of trains to an arbitrary figure, and a bill of that kind came near to being passed by Congress this last session. Proper manning of trains and determination of their length should be matters primarily for managerial discretion. Regulatory supervision might be necessary, but hardly regulatory restriction which unnecessarily hampers operating efficiency.

Possible increase in efficiency through coördination or consolidation has been greatly hindered by an agreement forced on railroad management in 1936 to give dismissal payment to any railroad worker who loses his job as the result of combination. The agreement made between railroad management and labor calls for an allowance amounting to 60 per cent of the dismissed employees' pay for periods from six to sixty months, depending upon length of service. While this agreement has been called "voluntary," it is hardly that, since an even more rigorous measure was pending in Congress. Railway management had seen how easily an amendment was passed in 1933 making it unlawful for the former Coördinator of Transportation to press coördinations which involved displacement of railroad labor, and it probably seemed to them to be better to make a "voluntary" agreement than to have a more severe provision imposed on them by law.

Estimates of savings that might result from coördination or consolidation place savings in labor costs as 70 per cent of the total savings. Obviously, much of the economy of coördination and consolidation is removed by the dismissal wage agreement.

A special retirement plan has been worked out for railroad labor, and a movement is on foot to have Congress pass a special unemployment insurance plan. In both cases the plans are more liberal than those applying to other industry under the Social Security Act, and the economic cost of labor is thereby higher.

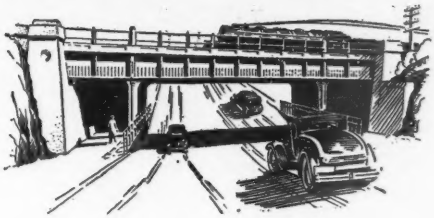
Increased Cost of Fuel and Supplies

THE railroads spend on the average around 22 per cent of their revenues from operations on fuel, ties, poles, rails and other steel products, ballast, and other supplies. This was about 30 per cent of their operating expenses in 1937. Increase of general prices has borne heavily on the railroads. Since 1933 material and supply costs have increased 40 per cent, with half of that increase coming in 1937.

Increased costs from this source account for an annual additional burden of over $200,000,000. If the Guffey Coal Act is upheld and bituminous coal prices are increased, the railroads will be subject to an even greater increase in fuel and material costs.

Taxes

WHILE tax payments are still below the taxes paid in 1929, for a depressed industry, the railroad tax bill is indeed high. The trend of local, state, and Federal taxes, compared with dividend disbursements and rate of return on investment, is shown in Table III. With higher taxes for retirement insurance and unemployment insurance



The Political Control Problem

"For over fifty years the railroads have been one of the favorite political footballs. Most of the rate, service, and finance regulation which has been built up over the years has been dominated by a sincere desire so to harness the facilities of this industry as to serve the public best. Notwithstanding the benefits of regulation, enough legislation affecting the railroads has been stimulated by political pressures and misapprehensions that political control comprises a major problem."

beginning, the tax rolls of the railroads will probably be materially higher in 1938. If a special unemployment insurance bill for the railroads is passed next year, as seems likely, tax accruals thereunder will be greater than with the separate state plans under the Social Security Act.

The more punitive nature of the Federal surtax on corporate incomes not distributed has been removed from the 1938 tax bill. But while the high rates are in effect, and to some extent under the new bill, many railroads which should use earnings to modernize equipment or retire indebtedness may have to pay these earnings out in dividends or pay a higher income tax.

Railroad Debts

One of the basic characteristics of the railroad problem is the debt structure. For Class I railroads, unmatured funded debt was around $10,500,000,000, or about 56 per cent of stocks and debt. That this is a high proportion of funded debt and that railroad bankruptcies may largely be explained by this debt are not open to question. If railroads had had as little debt as most manufacturing companies, the number of receiverships and trusteeships in the railroad field would have been extremely small. Almost all of the railroads have earned something over operating expenses, and, without fixed charges to meet, could have led a solvent existence. On the other hand, if the railroads had been able to receive even the most niggardly "fair" return on the fair value of their property, little difficulty would have been encountered by most railroads in meeting their fixed charges.

Railroad debt policy has perhaps been short-sighted in the past. Even

TABLE III

RAILROAD TAXES AND DIVIDENDS
(Class I Railroads)

Date	Taxes Paid (Millions)	Cash Dividends Paid (Millions)	Rate of Return on Investment (Per Cent)
1929	$396.7	$490.1	4.84
1930	348.6	497.0	3.30
1931	303.5	330.2	2.00
1932	275.1	92.4	1.25
1933	249.6	95.7	1.83
1934	239.6	133.4	1.79
1935	236.9	126.3	1.93
1936	319.8	169.8	2.57
1937	325.7	167.8	2.27

Source: *Railway Data*, May 27, 1938 (supp.).

when railroads could have refinanced some of their bonds by selling stock ten years ago, managements were not disposed to do so. Depreciation charges have been made half-heartedly and inadequately. Evidently the railroads did not see in this policy an opportunity to curtail debt.[7] Nevertheless, for two to three decades the rate policy of the Interstate Commerce Commission has been miserly. In the days when the railroads could have collected rates high enough to allow surplus earnings to go for the retirement of debt or the purchase of new facilities, inadequate rates were allowed by the commission.

THE present debt problem is to reduce fixed charges so that railroads can pay those amounts for which they are obligated by contract. This calls for speedier and sounder reorganizations. Section 77, the special Federal Bankruptcy Law applying to railroads, was to expedite these reorganizations. This law has been in effect since 1933, and although it was amended in 1935 to further facilitate reorganization, to date no important railroad has been reorganized.[8] Perhaps the relative values of different securities cannot be appraised until business recovers. But some of the difficulty in reorganization comes from the fact that the provisions of the laws are not clearly understood.

In administration of §77, both the Interstate Commerce Commission and the Federal courts share responsibility. Since so many features of bankruptcy law necessitate in the last analysis a composition of divergent interests, and because so many commission examiners, commissioners, and judges have authority to interpret these features, there is a lack of accord as to what constitutes a fair and workable plan.

Railroads and Politics

ANOTHER cause of the existing railroad problem lies in too much

[7] See article by the writer on this point in 14 *Harvard Business Review*, pp. 460-70 (1936).

[8] On June 17, 1938, the Interstate Commerce Commission approved the plan of reorganization of the Spokane International Railroad Company and the Coeur d'Alene and Pend d'Oreille Railway Company. This was the first approval involving reorganization of a Class I carrier under §77.

political control. For over fifty years the railroads have been one of the favorite political footballs. Most of the rate, service, and finance regulation which has been built up over the years has been dominated by a sincere desire so to harness the facilities of this industry as to serve the public best. Notwithstanding the benefits of regulation, enough legislation affecting the railroads has been stimulated by political pressures and misapprehensions that political control comprises a major problem.

Railroads have been regulated as monopolies in the face of increased competition within and without the industry. During the World War, the Federal Railroad Administration refused to increase freight rates as costs of operation rose, because the government wanted to keep down the cost of living. In 1923, a Congress, pledged to do something for agriculture, tried to take advantage of the railroads by directing the Interstate Commerce Commission to make the "lowest possible" rates for agricultural products. The influence of railroad labor in the political field is well known. Full-crew and train-limit laws are but a few examples of the many make-work bills which labor has pressed to bring about gain for the few. Many of the "voluntary" agreements between labor and management on wages, hours, retirement pay dismissal, and other matters have been made under the threat of even more drastic legislation.

Further political control was experienced in the closing days of the last Congress. Because the railroads had sought a reduction of railroad wages, Congress halted pending legislation to relieve the railroads. The political temper of railroad regulation is also indicated by the attempt on the part of some southern Congressmen to trade lower railroad rates for the South in return for southern support of the wages and hours bill. Happily, the bill was passed without such a trade having to be made.

The Way Out

SOLUTIONS for the railroad problem are varied. Some railroad executives confess that they see no solution. Others claim that all the government needs to do is to let the railroads alone. Some railroad "doctors" believe that all will be well when the railroads are "put through the wringer." Others believe that the government should loan railroads funds for meeting interest charges or even guarantee these charges in form of a subsidy. Still others see government ownership and operation as the way out.

An increase in traffic to the railroads, whether brought about by generally improving business or reduction of

¶ "CLOSELY *allied with the problem of railroad traffic and rates is the question of duplication of transport services. Under a competitive system such duplication would theoretically be removed by the weeding out of the inefficient. But as transport facilities have been developed through encouragement of government subsidies, principles of competition are not allowed to operate.*"

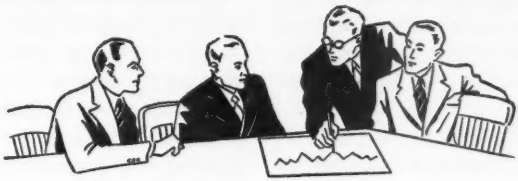
subsidies and regulation of competitive transport, would obviously do much to help the railroads. An improvement of business generally is a need not peculiar to the railroads. But a reëxamination of the policy of subsidizing other carriers and curtailment of these subsidies, except where need for national defense is clear or help in an experimental stage is justified, would bring a sizeable increase of traffic to the rails. If they can compete as well as they do now in the face of subsidies, what could they do without subsidies? And should the investor, taxpayer, or consumer object to elimination of uneconomic subsidies?

PERHAPS this is no time to increase railroad rates. Perhaps a further increase of rates would cause the railroads to lose by diversion of traffic more than they would gain. Nevertheless, if railroad managements feel that rate increases are needed, and so long as higher rates would not be excessive (with prevailing low returns in the railroad business they would hardly be legally excessive), why should not the managements be given more freedom in increasing rates? Prices have gone up considerably and railroad rates have not kept pace. Moreover, from evidence in the recent freight rate cases showing the financial difficulties of rail competitors, it is surely fair to assume that these competing carriers would move to raise their rates and not much traffic would be diverted from the rails.

More freedom might also be given to the railroads in particular rates. Discrimination is a matter of degree. Instead of holding such a tight rein on place and long-and-short-haul discrimination, would it be too dangerous an experiment if the Interstate Commerce Commission gave railroad managers a freer chance to work out rates? Since 1906, when the commission gained fairly complete rate powers, rates have not been notably adequate or designed to promote railroad solvency. Relaxing the reins and changing drivers would be an interesting and novel experience.

THE usual way for a person in financial difficulties to work himself out of the problem is to curtail expenses as well as increase income. The railroads have been doing an excellent job in paring expenses. However, certain expenses have been largely beyond their control.

In further curtailing expenses, labor and tax costs seem most vulnerable to attack. The railroads have served notice of their intention to reduce wages by 15 per cent. The railroad brotherhoods have countered with a strike threat. Unless the railroads should attempt to circumvent provisions of the Railroad Labor Act, this dispute will go into various stages of negotiation, investigation, and mediation, and may not be decided for months to come. Or, railroad labor may accept a small cut in return for the dropping of the 15 per cent order. It is to be hoped that the railroad managements will insist upon a reduction of the basic rate, especially for the train-service employees. Present mileage rates are not consistent with recent improvement of equipment and increase of speed. Not only could the railroads save much by reduction of costs, but it is probable that many railroad workers now unemployed would be returned to work. After all, wages



Relief Loans Not the Answer

"No immediate program to help the railroads can be expected to stave off many of the impending bankruptcies, unless there be a marked improvement of business. It may be that relief loans are the only means of alleviating the present situation. A loan policy, however, is bound to be fruitless in the long run for it overlooks the factors which give rise to the need for loans. What the railroads should have is not relief but an energetic treatment of underlying difficulties."

are a price of labor. When this price, as other prices, gets too high, less labor will be demanded. This is exactly what has happened in the railroad labor field.

EVERY increase of wages has served to curtail employment and to increase unit operating costs so that railroads cannot compete as efficiently with other modes of transport. Management must take a stand for reduction of the basic wage and railroad labor must be shown that their long run interests lie in that policy. The fallacy in thinking of those who believe that to do so would thwart prosperity lies in not distinguishing between a basic wage and a total wage for all laborers in a field. If transportation costs can be lowered per unit of output, the price of such service would be benefited ultimately and more service would be demanded. The sure way to prosperity lies in doing more, not less. Artificially high wages and restriction of output by obsolete operating rules are monopolistic devices to be condemned along with artificially high prices and restriction of output of a commodity.

Tax revision is an extremely difficult matter with which to deal. So many governmental agencies from Federal and state governments to the township and school districts levy taxes on the railroads, that it is difficult to expect much relief from the burden of taxation. Some tax reduction should be attempted. Perhaps an enlightened civic leadership can bring about a reduction in taxes, if loss of all railroad revenues through abandonment of line or government ownership is seen as the alternative. The public is awake to railroad difficulties. By concerted effort, reduction of railroad taxes might be effected. Failing in this, railroads

should scrutinize possibilities of abandoning unnecessary facilities which pay taxes. Consolidation of railroad lines and abandonment of surplus property may be a way to gain tax reduction.

INDEED, widespread consolidation or coördination may be a way out of the railroad problem. Consolidation itself is hardly a complete solution. This is especially true when one considers that a great part of the savings possible under consolidation will come from restriction of employment with its expensive dismissal compensation. Nevertheless, the railroads, jealous of each other's position, have not investigated possibilities of increase of efficiency through some kind of consolidation. Consolidations forced by law may be the answer. Or giving railroads a freer hand in consolidation, with government supervision of prices paid for acquired lines and arrangements made, may be a means of bringing about reduction of competitive wastes. Before much headway can be made in consolidations, the present "voluntary" compensation dismissal pay agreement may need changing so that a large part of the savings from consolidation will not be counteracted by costs of effecting the union.

Many of the railroads must admittedly be "put through the wringer." When reorganization is completed, it is to be hoped that those railroads now bankrupt will be in the position that the Sante Fe, Union Pacific, and Norfolk and Western were after their reorganizations some years ago. Too often railroads have been reorganized only to fail again under an excessive burden of fixed charges.

THE Interstate Commerce Commission now has authority to mold a railroad financial plan. As soon as possible the commission should formulate principles upon which the reorganized company's financial plan should be based. If the commission and the Federal courts cannot agree on underlying principles, perhaps a revision in the bankruptcy law would be helpful. A special bankruptcy court for railroads, made up of experts in this field, might furnish the basis for development of sound reorganization principles, so that successful consummation of present reorganizations need wait only for business conditions which will make possible a reasonably accurate forecast of future earnings.

No immediate program to help the railroads can be expected to stave off many of the impending bankruptcies, unless there be a marked improvement of business. It may be that relief loans are the only means of alleviating the present situation. A loan policy, however, is bound to be fruitless in the long run for it overlooks the factors which give rise to the need for loans. What the railroads should have is not relief but an energetic treatment of underlying difficulties.

THAT which will help more than anything else in solving the railroad problem is an enlightened public policy reflecting an enlightened public opinion. Railroad publicity has not been as effective as one should wish. Instead of educating the public on the particular problems the railroads face, relatively too much attention has been paid to the prosperity-making purchasing power of the railroads in the community. Instead of claiming a right to

revenues equal to costs plus a fair return on property used for public service, and enforcing this claim in the courts if necessary, the railroads have argued their case before the Interstate Commerce Commission and before the public in terms of generalities like "fair treatment" and "equality of opportunity." Repeatedly in rate cases, the commission has noted that the railroads have failed to present "substantial evidence" that existing rates fail to cover costs of transportation.

Public imagination is fired by the recent innovations in railroading. Recent surveys of public opinion show a preponderance against government ownership of railroads. The public seems to have sympathy for the railroads in their financial difficulties. The time is ripe for molding an enlightened public opinion which will force a sensible government policy toward the railroads. Leadership and statesmanship are called for. Is it too much to expect that they will be forthcoming?

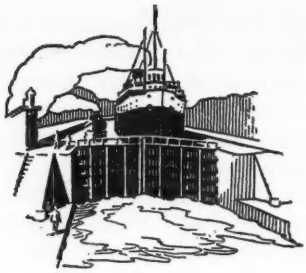
¶ *In Part II of this series, which will appear in the next issue, the author will discuss the question of congressional policy toward the railroads.*



Curfew at the Busbar

ELECTRICITY *has changed America's bedtime since the turn of the century, but fifty years ago when homes wired for electricity were few and far between, it established a 10 o'clock curfew for electric light company customers, unless they cared to sit up in the dark after that hour. Part of an agreement into which a customer entered in subscribing for the service of one light company of the gay 90's specified that the lamps must be turned out promptly at 10* P. M. *Not only that, but the customer was not to turn on his lights at all on Sundays.*

Today's nearly 400,000 residential electric customers in Connecticut would have a difficult time complying with these and a few other strange stipulations found in an old contract of the Naugatuck Electric Light Company. At the rates prescribed by the 50-year-old contract, the average domestic light bill of today would far exceed its 1½ per cent of the total average family budget as found in a recent government survey. Cost of electricity today is only 17 per cent of what it was half a century ago.



Canadian Objections to the St. Lawrence Project

It consists of the stand of two strong young men, Premier Mitchell F. Hepburn of Ontario and Premier Maurice Duplessis of Quebec, opposed to that of William Lyon Mackenzie King, prime minister of the Dominion, who is understood to favor United States Secretary Cordell Hull's latest proposal for a deep seaway and power development.

By HAROLD DINGMAN

On the Canadian side of the border the success or failure of the new St. Lawrence deep-sea project rests with three men, each operating in a separate domain and each commanding tremendous power.

These three are new to the St. Lawrence picture since the day Henry Stimson, Secretary of State for the United States, and Prime Minister Bennett of Canada negotiated the treaty of 1932. In the six years that have passed Canada has witnessed a political upheaval and has experienced, in common with the United States, a sharp reversal in industry. And so today, instead of an atmosphere which would tend to overcome all the old obstacles to settlement, there are confusion and disunity in the political scene and an adverse industrial situation.

First the political scene, for it will play the most important part in reaching a settlement concerning Cordell Hull's latest proposal.

In Ontario, the province most vitally concerned with the deep-sea scheme, there is Premier Mitchell F. Hepburn. He is a young man of sudden impulses, with a flair for colorful politics and forceful administration. He has completely reversed the attitude of the previous Ontario government and has flatly declared he won't coöperate on St. Lawrence.

In the neighboring province of Quebec, through which flows the mighty St. Lawrence, is a political leader of the same calibre, a young man who rose to power in the wake of an ancient Liberal régime which ruled for forty uninterrupted years, but which crumbled after a political scandal.

Premier Maurice Duplessis came in with a new broom, swept away the ashes of the old administration, and has remained to prosper and grow in strength. He, too, is opposed to the new treaty.

But what is more important, looking at the treaty from the provincial standpoint, is the operation of what is known in Canada as the "Ontario-Quebec axis." It means, simply, that the youthful leaders of the two richest provinces in Canada get together periodically and discuss their common problems — pulp-wood exports, hydro developments, labor troubles, and the St. Lawrence seaway. And they always present a united front.

BETWEEN these two strong young men who lead the provincial forces is the other of this triumvirate concerned with St. Lawrence. He is William Lyon Mackenzie King, Prime Minister of the Dominion. Now in his early sixties, he has been Prime Minister four times since 1921. He is the student type, quiet and unassuming. He is a strong internationalist and it is generally understood in Ottawa that he favors Cordell Hull's latest proposal, but he has not, to date, expressed an opinion one way or another.

Mr. Mackenzie King is not as aggressive as was his predecessor in office, Prime Minister Bennett, and he has not pressed for a quick agreement on the treaty. Added to this is a sharp cleavage of political opinion between Mr. King and Mr. Hepburn and Mr. King and Mr. Duplessis. Both King and Hepburn are Liberals and therefore of the same political stripe, but they have long been at loggerheads, to the embarrassment of the Liberal party as a whole. Their most recent quarrel involved the waterways scheme. Hepburn wanted to export surplus power to the United States. King refused a Federal export license and Hepburn accused the Prime Minister of working in collusion with the United States government to force Ontario to contribute to the St. Lawrence construction.

Back in 1932 both the political and industrial situations in Canada were favorable to the treaty. The then Prime Minister, Mr. Bennett, had won the support of the Ontario government, headed by Conservative Premier George S. Henry. Mr. Henry's administration had also volunteered to put up $100,000,000 for Ontario's share.

That treaty might have been signed, but for the attitude of the United States Senate, which finally killed it in 1934. That year, also, the political trend in Canada swung sharply away from the St. Lawrence advocates. At about the time the U. S. Senate was voting against the project, the Ontario voters were routing Premier George S. Henry from office, and they elected young Mr. Hepburn. Thus St. Lawrence lost one of its most valued supporters and won an enemy.

A YEAR later, in 1935, Prime Minister Bennett went to the polls and he, too, was defeated. Another blow for the deep-sea scheme. And in the following year the Quebec voters elected Maurice Duplessis, friend of Ontario's new Premier and an active opponent of St. Lawrence. The death sentence on the scheme was all but written, with the only hope of reprieve resting with Canada's new Prime Minister, Mr. Mackenzie King.



La Presse

HISTOIRE SANS PAROLES

But the industrial changes were already underway, striking at the rich power-consuming industries of both Ontario and Quebec. Through the depression years from 1930 on, hydro consumption fell off as industry slackened. And the railroads lost freight and the trucking business cut into their revenue. The new leaders of government turned deaf ears to any suggestions that new avenues of shipping be opened.

Faced with this situation, the Ontario Hydro Commission, one of the world's greatest public utilities, found itself burdened with long-term power contracts with Quebec power firms, negotiated and signed in the prosperous years before 1930. The Hydro Commission had bought the power at $15 per horsepower and was forced to sell it in some instances at a loss. The once rich commission was beginning to drain its reserves to meet expenses.

That, at least, was the situation as the Hepburn government explained it to the public. To escape the oppressive burden the government canceled its long-term contracts with Quebec and has now signed new 10-year contracts at $12.50.

And here again the St. Lawrence project enters the Ontario scene. Although it has broken its old contracts and written new ones, the Ontario Hydro Commission is still purchasing the same large quantities of Quebec power. Premier Hepburn conceived the idea of exporting 110,000 horsepower to the Niagara Hudson Company, of New York.

PRIME Minister Mackenzie King declined to grant the export license, and said he would leave it for the Canadian Parliament to decide. Before the issue could be placed before the Federal House, however, President Roosevelt announced he did not wish to import any more Canadian power on a short-term basis.

The Cordell Hull proposal, of course, changes all this and makes three important concessions to Ontario. Firstly, the United States would absorb Ontario's surplus power; secondly, the United States would permit Ontario to divert the waters of the far-northern Albany river into the Great Lakes system, which would increase the flow at Niagara and thus increase power production at Niagara; and, thirdly, the United States would assure the immediate undertaking of remedial works to preserve the scenic beauty of Niagara Falls.

All three are dear to the heart of Premier Mitchell Hepburn. But still he is opposed to the new treaty. Balanced against the possible advantages offered, Ontario would have to pay $100,000,000 or more for its share of the development. Then there are the old arguments that the railways and the other transportation systems would suffer, with a consequent blow to labor.

Cordell Hull has offered to permit Canada to defer its share of the development for a period of eleven years, or until such time as the Ontario industrial market could absorb the new power developed on the St. Lawrence.

To Mr. Hepburn that sounds all very well, except that United States industries would immediately have power at $8.50 per horsepower. And Ontario has a lasting ambition (and it has had important successes) to encourage United States industries to cross the border and use Ontario's cheap power. Hydro at $12.50 is still cheaper than the United States can produce it, but if United States industry had $8.50 power available, it would have no inducement to move north to Canada.

PREMIER Mitchell Hepburn has said bluntly he can see no sound reason for going ahead with the St. Lawrence project. The night Mr. Hull's proposal was published, Mr. Hepburn told newspaper men:

> Whatever is done will in any event have to be done on borrowed money, and the people will have to pay for it over a long period of years. We have suffered already from overexpansion in railways and we don't want any more of that. Ontario has no need for any more power. Needless to say, I shall take Mr. Hull's treaty proposal under consideration with my cabinet, but I want to make it clear that I am not going to be swept off my feet by any propaganda or ballyhoo, and anything that Ontario may agree to will first have to be truly justified on economic grounds.
>
> Why they should propound another avenue of transportation at a time when the railway situation both here and in the United

States appears to be running into greater difficulties is beyond my comprehension.

The Ontario Premier has won the active support of his neighbor, Premier Duplessis, in his stand against the St. Lawrence. The Province of Quebec is not required to advance huge sums of money for the project and Duplessis' concern is purely with the greater river ports such as Quebec and Montreal. He fears that these busy cities would lose their ocean trade to inland cities both in the United States and Canada.

And a good deal of Quebec's bread is buttered in Ontario. There are, for instance, the Quebec power firms with the big contracts with the Ontario Hydro Commission. Ontario, despite all its own natural power resources, is still the best customer of the Quebec companies.

The St. Lawrence project would end that.

If the Federal government wished to press for conclusion of the project it need not have the consent of Quebec. But the political pressure is great. The French-Canadian province has 65 seats in the Federal House, most of them now Liberals under the Mackenzie King banner. But they might easily turn from their Liberalism if the economic life of their native province were threatened.

PRIME Minister Mackenzie King has not yet replied to Washington's proposal for a treaty which would enable the United States to proceed immediately with construction work. Until he can get Ontario's consent there is little he can say or do.

But although both the political and industrial factors seem unfavorable at the moment, the situation is not hopeless. Canada's industry is only in its infant stage and must sooner or later require a part or all of the 1,000,000 new horsepower to be had from the St. Lawrence development. And progress in industry will quickly sweep away any political opposition.



Those Strong Silent Men of the North

CANADIANS *are the most talkative people in the world and they are getting even more so. This is what the Dominion's telephone statistics seem to indicate. Telephone conversations per capita during 1935 in Canada numbered 210.8, compared with 197 in the United States, 173.9 in Denmark, and 152.2 in Sweden, the next highest countries. Still on the increase, Canadian calls were 222 a person in 1936, the latest year reported.*



Can Planned Economy Work In the Utility Business?

The author thinks not, believing the regimentation of private capital impossible—effect of Holding Company Act, requiring integrated systems, and of governmental competition on the flow of speculative capital into the industry.

By JAMES C. DE LONG

One of the basic fallacies in the economic thinking of the present administration — one not confined to this country alone—is the implication that regimentation of the national economy can be applied straight down the line to include the people who provide the financial stakes for private business enterprise. No government has ever succeeded in imposing a national investment policy upon its citizens, yet belief seems to prevail here that economic planning has reached such a stage of perfection and social desirableness that private capital will be only too willing to underwrite any enterprise containing the government seal of approval. This view imputes to private capital an unselfishness and a spirit of altruism it does not possess, flattering though it may be.

Most of the laws enacted during the last five years and designed to improve upon a free competitive economy seem to reveal this same sophomoric comprehension of the simple fundamentals governing investor behaviour. In support of this we need not go beyond the public utility program as revealed by the policy underlying the TVA, Federal subsidies of competing municipal power plants, and that crowning achievement, §11 of the Public Utility Act of 1935. It is true, furtherance of the TVA undertaking and loans and grants to municipalities have been accompanied by verbal assurances that protection of the investor was as much a concern of government as cheaper electricity, yet the investor's tax dollar all the while has been openly used to impair or destroy utility investments. But the utility investor has been helpless against these depredations. He was caught holding the bag. Enforcement of §11, Utility Act of 1935, dependent as it must be upon investor acceptance and coöperation, is another story.

THERE is no doubt in my mind as to what those in authority in Washington would like to have done to the nonintegrated utility holding company.

They would like to turn it into a corporate eunuch, no more and no less. President Roosevelt left no room for speculation on this score when on March 12, 1935, in his message accompanying the National Power Policy Committee report to Congress, he said in part:

> Except where it is absolutely necessary to the continued functioning of a geographically integrated operating utility system, the utility holding company with its present powers must go.

The simple purpose of the act is to diminish the power of the holding company in the electric and gas industries through the process of dismemberment and to establish regionally integrated operating systems.

This can be accomplished of course, but is it practicable? Now that our passions have subsided somewhat on this question, we may ask with impunity, will it work as well as under a well regulated, geographically diversified holding company system?

There is no doubt that the regional, integrated operating system idea has much in its favor. One of the fundamental weaknesses of the holding company principle as applied to the utility business is that, argue as you will, you cannot escape the conclusion that the business of producing and selling electricity and gas, essentially is a local business. It is local, because of the geographic limitations imposed upon the transmission of these commodities; it is essentially local because a good local management is invariably superior to a good centralized management. And it is particularly superior today because local management can draw upon independent service organizations to solve extraordinary local problems, when and if they arise.

BUT I am pursuaded that the interests of consumers would not be well served by proposed dismemberment of the holding company in this field. This for the simple reason that the simplification proposed, both in capital structures and corporate affiliations, would immediately close the door to a large supply of equity capital which is necessary for continued development of the utility business.

One of the greatest contributions of the holding company to the utility business has been the development and refinement of the speculative profit incentive. It has introduced this into a business which, standing alone, does not contain sufficient speculative appeal adequately to provide for its own equity capital requirements. The holding company has filled this need through the simple process of imposing a pyramided capitalization upon the operating company equity base. Unfortunately such a capital structure is susceptible to abuse and the financial power which it has conferred upon a few has been used in some instances in uneconomic and antisocial endeavor. And these practices have been responsible for crystallizing public sentiment against further application of the holding company principle in the utility business. But I believe we are capable of eliminating these practices through regulation without liquidation of the holding company. We do not argue for elimination of the automobile simply because it is an instrument of destruction in the hands of a few.

THE holding company has performed a useful service to the utility industry. Its most important function has been in providing equity capital to its associated companies. This has been equally true of the integrated and nonintegrated systems. Approximately 4,000,000 people have purchased and now own utility holding company securities. Their money has gone into the improvement and extension of utility properties. By and large it represents speculative capital although a very substantial portion is represented by bonds and preferred stocks of holding companies. The holding company common stock is the essence of speculation because it is usually far removed from tangible assets and earnings. But until the New Deal blight fell upon this industry, the utility holding common stock was the speculative favorite with the investing public. Why?

Profit possibilities in corporate equities are usually commensurate with the risks involved. Speculative risks inherent in the holding company common stock have always been great. But by the same token the opportunities for capital enhancement have been great. The conception of the holding company capital set-up is one to whet the speculative appetite. It is deliberately fashioned to appeal to the desire, inherent in all of us, to realize large speculative profits on our commitments. It has done to the operating profits what whipping does to cream. It is an arrangement in which the leverage principle has been developed to the nth degree. It is a fair weather capitalization, based upon the belief, and one that was fairly true until 1930, that the trend of utility gross revenues would be consistently upwards. It is a capitalization arrangement designed to magnify holding company net results through any modest change in operating company income.

THE operation of this leverage principle is not very widely understood among investors but the effect upon market action of the stock is, and it has placed the equity stock of the utility holding company upon the preferred list of those with speculative funds. Thus the element of large speculative profits has been injected into a field which by its very nature is phlegmatic and one that under ordinary circumstances has little appeal for owners of venture capital.

Without the aid of the holding company device, it seems a fair assumption that private utility progress would have been at a much slower pace in this country for it has provided the necessary speculative funds to finance experi-

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mental progress. As this is directly traceable to the profit incentive peculiar to the holding capitalization, and not profit incentive springing from the business itself, before we scuttle the holding company what are we offered in the way of a substitute? Is it true that the operating companies are well out of their swaddling clothes and that they can finance their own requirements without need of the holding company as an intermediary in the money markets? Just saying so doesn't make it so, even if the expression comes from highest political authority.

A CLUE to this question can be found in observation of the more familiar traits of speculative capital. For one thing, speculative capital bears no allegiance to any business. The utilities have no option on the speculative funds of this country. They must compete in the open market for their funds. Private capital is never earmarked. It goes where it receives highest rewards and stays only so long as it is well treated. It is mercurial and elusive. It is selfish, perverse, and wholly independent. It will go to work or it will loaf. It cannot be "regimented" this side of a totalitarian state. It is particularly allergic to a planned economy because planned economy is merely a polite term for a restricted economy, one in which venture capital is expected to continue its venturing but divide its winnings, if any, with the less astute and less venturesome. Strictly venture capital or speculative capital seeks one objective, to multiply itself, either through high wages (dividends) or appreciation of intrinsic value. Any other appeal to speculative capital falls on unsympathetic ears.

Speculative capital took to the holding company securities under the present arrangement. Will it support with equal liberality the regionally integrated system?

I SAY with equal liberality because it seems to me this business will have more need for equity capital in the future than it has had in the past. In the first place new capital that goes into the utility business in the future should be preponderantly equity capital. The business is maturing and as a business matures it becomes increasingly speculative. Certainly the fate which has overtaken the traction and steam railroad industries is not in immediate prospect for the electric and gas utilities. Still it would seem the better part of wisdom at this juncture, for the protection of society, to discourage "widow and orphan" investments and to encourage increasingly speculative capital, capital which can take risks and lose without seriously disturbing our economic equilibrium.

There are many reasons why, in my judgment, the regionally integrated utility operating company could not do as effective a job in raising equity capital as holding companies in their present form. The regional idea violates every convention of diversification of risks. Such a company would be subject to local economic depressions, to floods, to droughts, to incompetent management. And inasmuch as there have been no pledges that if § 11 were embraced whole-heartedly the utility industry could be expected to enjoy protection from competition by its own government, let us not overlook the vulnerability of the regional utility to competition from the Federal and sub-



Diversification of Risks

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sidiary governments. An idea of what might happen in such a case can be had by glancing at the market quotations for securities of companies caught in the TVA web.

IN the Commonwealth & Southern Corporation annual report to stockholders, covering the year 1937, President Willkie makes the following statement:

> These companies (operating units within the area of the TVA) have made reasonable increases in their power load and gross revenues during the past five years and have continued their policy, adopted over ten years ago, of instituting low promotional residential rates and promoting high residential use. Although the 1937 gross revenue of these companies was 114½ per cent of their gross revenues in the year 1929, their 1937 net income after preferred dividends was only 37 per cent of the comparable net income in 1929. The inability to earn a satisfactory return has been in part due to the rapidly rising costs of operation, particularly taxes, but principally to the impossibility of refinancing the companies' senior securities at low interest rates as have utility companies in other parts of the country unaffected by the potential competition by the Federal government and its agencies.

Although the northern properties of this system obtained new money during the year in the net amount of $23,117,750, in large part through the sale of their own securities, the southern companies failed to elicit any public interest in their securities and were forced to fall back upon the financial aid of the parent company. At December 31, 1937, loans from Commonwealth & Southern Corporation to its southern properties aggregated $8,656,000. In maneuvers of war, opposing generals try to isolate units of the enemy and pick them off, one at a time. Viewed from this standpoint, is it possible § 11 is the contribution of the public ownership crowd to the Public Utility Act of 1935?

APART from the political hazards, why should astute speculative capital in any great abundance go into this business at its source when the very thing it is seeking, appreciation, is repugnant to those in charge of the des-

tinies of such companies, the state regulatory commissions. Venture capital is looking for more than "a fair return of used and useful property." Why should this capital, capital looking for appreciation, go into this business on this basis? Profits are restricted to a well-defined ceiling; speculative risks are not. It has subsidized the utility business in the past through the medium of the pyramided holding company because this capitalization provided the necessary speculative "kick." But equity stocks of the simply capitalized, integrated company lack this speculative flavor. The junior shares of such companies as Detroit Edison, Commonwealth Edison, even Pacific Gas and Electric, are commonly referred to in financial circles as semi-investments. And I am frankly of the opinion that there is not enough of this type of capital to go around. I don't believe this reservoir is large enough to provide the necessary equity capital needs of the entire industry.

It is unfortunate immediate decision on the future financial status and function of the utility holding company cannot be had. For this business is needful of equity capital now. A great many properties have had to increase bond capitalization beyond the point of prudence. Speculative capital is needed and this should be raised through sale of holding company securities. But the holding company is impotent in the money markets and will remain so as long as it remains in the shadow of the hangman's noose. The cards are stacked against it today and the investing public knows it.



Domestic Phenomenon near Radio Transmitters

"WHEN they (folks in East Rahway, N. J.) turn their radios off, the WOR program comes in through the plumbing, the steam pipes, or the kitchen stove. The technical explanation of this phenomenon is that any oxidized or rusty metal surface 'rectifies' the powerful electro-magnetic waves, turning them into sound waves. This applies within a half-mile radius of the transmitter. People are always dropping around to the towers to report that their cast-iron lawn deer is giving out Bulova Watch time or their wire fence issuing news bulletins on the Sino-Japanese war. These folk are usually more puzzled than angry and go away peaceably enough as soon as the situation has been explained to them. It's common in a lesser degree around the other radio stations. An alert little boy in East Rahway has rigged up a copper antenna with which he catches enough power to supply a lighting system in his playhouse. It's not a fact that the radio men want to spread about, but they admit that during broadcasting hours you could light an entire house with radio energy."

—*The New Yorker.*



Wire and Wireless Communication

THE relationship between gambling and telephone service is getting quite a bit of attention these days. By reason of its somewhat sensational background, this issue usually gets much more publicity than its inherent importance would warrant, but that very fact makes it a pesky problem to the telephone companies.

The general attitude of the Bell System (in which those few larger independent companies having a similar problem undoubtedly concur) was just about summed up in the testimony of a Bell official during the early hearings in Washington on the special telephone investigation by the FCC. It was to this general effect: While the gamblers offered such a comparatively small volume of business compared to total legitimate traffic that the telephone companies would be acting against their own interest to try to promote such business for whatever profits might accrue *per se*, a summary refusal of service upon mere suspicion of illegal usage might also involve political hazards to a telephone company's general public relations in a given community. In other words, the telephone company has to watch its step so as to avoid making more enemies than friends in trying to act as the arbiter of morals in a community which might not appreciate the utility in that rôle.

The problem is not new. There are cases on the subject involving telegraph companies under similar circumstances which run back even beyond the days of generally widespread usage of the telephone. But the attention given to the subject in the recent Proposed Report of the FCC special investigation seems to be bearing some fruit. In two large cities, Philadelphia and St. Louis, the matter has been dragged right out into the public headlines during the past month.

In Philadelphia, the issue was considerably confused with a local political situation in that a leading newspaper publisher of that city, said to be active in the systematized dispensation of gambling information, was also claimed by the Democrats to be a leading backer for the Republican opposition. Be that as it may, the resulting order of the Pennsylvania Public Utility Commission directing the telephone companies of that state to cease and desist from rendering leased wire service to known "bookies" and allied gentry, conceded that the telephone companies had been at a disadvantage because of the usual obligation which devolves upon a utility to furnish service indiscriminately. Such an order, the commission felt, was required to correct the situation and telephone officials subsequently asserted that their companies were only too glad to comply with it. It is also noteworthy that the FCC and Justice Department at Washington were said to be studying this Pennsylvania order with a view to drafting a bill for the next session of Congress, which would outlaw illegal usage of telephone service for gambling purposes on a national scale.

THE St. Louis situation is interesting not only because it appeared to have developed more spontaneously (that is to say, without benefit of any particular political inspiration) but also because it resulted in an opinion by the city counselor, Edgar H. Wayman, with respect to the criminal liability of telephone companies and their agents in knowingly allowing the use of their facilities for illegal purposes. The opinion was rendered upon the request of Samuel H. Liberman, a member of the St. Louis police board.

Wayman advised the board, in his opinion, that the police can lawfully arrest persons whom they "believe and have reasonable ground and probable cause to believe" to be using telephones for unlawful purposes connected with racetrack gambling. The police have been making such arrests, but have found it almost impossible to get convictions. Wayman's letter does not specify the character of evidence necessary for convictions in such cases.

The city counselor also cited a local ordinance relating to the stringing of wires which might be used against the telephone company furnishing service to bookmakers; but he held that the telephone officials could be prosecuted only in case they knew, at the time the wires were strung, that they were to be used unlawfully.

The police board, through Liberman's letter of inquiry, sought to learn whether, and how, it could stop the use of telephones in handbook race gambling. Its inquiry came after the law enforcement officials of Louisville, Ky., had moved against such use of telephone facilities, and had caused closing of the office which furnished racing information to Louisville bookmakers. A similar establishment is operating in St. Louis.

Louisville officials proceeded under a local ordinance which prohibits telephone companies from granting their facilities "for any purpose" connected with race gambling. There is no such specific reference to race gambling in the St. Louis wire-stringing ordinances, which refer in general terms to use of wires for "any illegal purpose"—gambling or otherwise.

* * * *

MORE important in its possible consequences to the telephone industry than the annoying "gambler's telephone" is the recent revival of sentiment for municipal ownership and operation of telephone service in Seattle, Wash. (reported in PUBLIC UTILITIES FORTNIGHTLY, November 10, 1938, page 664). So far there is no municipality of any consequence in the United States which renders general telephone service; nor, for that matter, is there any such operation by any other public political subdivision, although some Federal agencies, such as the Forestry Service, do operate certain limited telephone facilities for the performance of their own routine affairs.

The agitation in Seattle has so far not assumed threatening proportions. It seems to grow mostly out of a local rate controversy between the Pacific Telephone & Telegraph Company and a group of dissatisfied subscribers. But the disturbing angle is the tie-in attempted by proponents of a municipal telephone service with Seattle's popular and expanding City Light bureau. Seattle has long been in the van of the movement for public ownership of utilities, and its municipally operated electric plant is often held up as a blue ribbon exhibit of successful operation of a municipal power distribution system.

The suggestion is now being made that the expanding City Light service, which is working in close coöperation with the Federal administration of Bonneville under Administrator J. D. Ross, should enlarge its cables and conduits to take on telephone service. There is more than a bare possibility that some Seattle citizens might associate the successful operation of their municipal power plant with the possibility of equally successful operation of a municipally operated telephone system. This would not necessarily follow, of course, but private telephone officials are wondering just now about the best way to impress the distinction upon the mind of the average Seattle resident so as to check possible growth in municipal telephone sentiment.

FROM the way matters turned out at the recent congressional elections, it begins to look as if nothing much may happen to the Communications Act at the next session of Congress, notwithstanding widespread hints that the administration was getting ready to "rip" the bottom out of the FCC, by amendatory legislation, in order to clean up the premises and start all over with a fresh set-up, carefully prepared with a view to obtaining harmony and discipline.

It is quite probable that the New Deal inner circle would still like to do that very thing. But it is equally probable that the new Congress will develop ideas of its own as to what should be done with the FCC. Result: Stalemate as far as substantial legislative change is concerned at the next session.

This does not mean, of course, that the FCC will necessarily escape its long threatened investigation by the Congress. It does mean that nothing much may come of it—thanks to a dog-fall between the administration, which would like to make the FCC over to its own image and likeness, and an aroused Congress which is not at all likely to agree but seems now disposed to smell around a bit longer on its own initiative.

Most Washington prognosticators had expected that President Roosevelt would include any new shake-up legislation he might have in mind for the FCC as part of his new reorganization bill. But with all the new Republican members showing up in the House of Representatives, and the Democratic brethren beginning to feel the shift of public opinion, the chances seem slight for any sort of a general reorganization bill, even if Chairman John J. O'Connor will no longer be at the helm of the House Rules Committee when the school bell rings on Capitol Hill next January. Probably the most the administration could get enacted in the way of a general reorganization bill would be but a feeble semblance of its original form, and would certainly contain no drastic ripper provisions.

It may be that President Roosevelt, under such circumstances, will make the FCC an object of special legislative recommendation, thereby putting the responsibility on Congress to do something or do nothing about the situation. But it is still doubtful whether Congress would do more than accept the same as an excuse for starting its own investigation thereby probably pickling actual progress on such legislation for the balance of the session.

And so it would seem that the FCC, such as it is, will be with us for a while longer, barring death or unforeseen resignations. Presumably Chairman McNinch will be allowed to continue his efforts to mold the staff and lower strata personnel of the FCC along less rebellious lines if he can continue to get a majority of the membership to go along with him, which is doubtful over a long range.

BUT while the administration may lack the power in the next session to drive over ripper legislation that would subject the FCC to administrative domination (either through a reorganization under the Post Office or Commerce Department, or some similar device), it certainly retains the power to block any move by Congress to put through any different sort of reorganization program or amendatory legislation dealing with the Communications Act. It is not even likely that any such steps will be taken but that Congress will content itself in one or the other or both branches with getting an investigation of the radio industry and the FCC underway.

Probably the Senate will be the scene of the first move in this direction. It is reported that Republican Senator White of Maine, aided and abetted by Democratic Senator Wheeler of Montana, who is chairman of the Senate Interstate Commerce Committee, is prepared to renew his resolution for a Senate investigation along these lines.

The absence of Representative O'Connor in the lower house may check temporarily the momentum of the anti-FCC bloc in that branch of Congress. Recent developments in radio broadcasting, such as the much discussed broadcast drama concerning the fictitious invasion from

Mars, has added modest but cumulative force to the general disposition of many Congressmen to poke around in the radio and FCC preserves and see what goes on there. It is both an attractive and intriguing field for congressional investigators. There is also the likelihood that pressing need for tapping new sources of congressional revenue will revive the suggestion of special taxation on radio broadcasting stations. Even routine hearings on proposed legislation of this character could reopen the whole controversy over radio regulation.

* * * *

IN an effort to check faltering public support, as evidenced by the recent general elections, the word goes round Washington that Rearmament is going to be the watchword of the New Deal for the next two years.

This is, of course, second best choice to the revival of the "kept us out of war" issue (which was so successful with the first Wilson administration), which might have been available if the recent European crisis had resulted in a major armed conflict. But preparedness as a keynote has its interesting possibilities and the emphasis which the administration may place upon it from now on may have important repercussions in the field of communications.

It is known, for example, that Army and Navy officials were somewhat concerned over the recent incident involving the broadcasting of a fictitious dramatic program which resulted in some degree of popular panic. The fact that the American public could be suddenly thrown into a state of hysteria by the casual broadcasting of a fragment of pure fiction was not lost upon them. And so while the emergency provisions of the Communications Act — §606 — already give the Federal government pretty complete control over radio broadcasting not only during periods of actual warfare but even during any other period of national stress, it would not be surprising to see some additional recommendations from the military group for legislation designed to give the government a greater measure of "protective security against the possibility of public demoralization by design or accident."

These Army and Navy watchdogs of our national defense do not have in mind any idea of nationalization of radio broadcasting nor censorship in the conventional sense of that term. They are merely wondering whether there should be a more systematic set-up of safeguards and checks against abuses of the broadcasting facilities of the United States. At present the editing of broadcast programs is entirely in the hands of the operators of the broadcasting stations. Nobody has seriously suggested that these operators are not making a sincere effort to fulfill that function, with due regard for public interest, safety, and morals. Probably the civil liberties bloc in Congress will raise an outcry against any attempt to curtail that managerial discretion by any device even remotely suggesting an official observer or monitor.

For the telephone and telegraph industries, the emphasis which may be placed on preparedness during the next two years of the present administration at Washington is not likely to result in anything more drastic than developments which might result from increased counterespionage activities and the greater coördination of communications facilities for purposes of national defense in the event of general or regional emergencies.

* * * *

CHAIRMAN McNinch has just about completed his "purge" program in the FCC staff as a result of the recent action taken by the commission in abolishing the examining division and the post of information director. Commissioners Craven, Payne, and Case dissented in the elimination of the examining division, while Commissioners Craven and Payne voted against the dissolution of the information post. The practical result was to oust from the FCC Chief Examiner Davis G. Arnold and Assistant Chief Examiner Melvin H. Dahlberg, and G. Franklin Wisner, former head of the information section. The Civil Service status of all three was not technically disturbed.

Financial News and Comment



By OWEN ELY

The New Rapprochement

Chairman Groesbeck of the Electric Bond and Share Company stated November 1st, after a conference with President Roosevelt, that the rapprochement between the utility industry and the government presaged an era of coöperation and understanding. "Its implications are of far-reaching national significance. We need only recall the negotiations between the National Defense Power Committee and the utilities, culminating in the meeting here . . . , to realize that mutual understanding and coöperation have advanced beyond the theoretical stage."

As reported by *The New York Times*, Mr. Groesbeck remarked that the far-reaching importance of the industry's decision to place immediate orders for new equipment apparently had been underestimated. He said that while the value of the purchase commitments had been estimated at about $100,000,000, this took no account of supplementary equipment necessitated by generator installations. He placed the cost of equipment capable of producing a kilowatt of electricity energy at $117 and said that would leave the total of equipment purchases involved at about $117,000,000. But he explained that for every $117 spent, $240 of additional equipment was required, a consideration which would raise the cost of contemplated equipment purchases to about $357,000,000.

The question of the character and extent of Federal aid toward the financing of the so-called war-defense program remains somewhat indefinite. Chairman Jones of the RFC has quoted Mr. Carlisle of Consolidated Edison as stating that the maximum amount which the utilities might seek to borrow from the RFC would be $250,000,000. Mr. Jones added that most of the utilities which might want loans could get them from private banking interests, but that there were some which would have difficulty meeting their requirements in that manner. These, he said, were the ones with which the RFC was ready to talk. The RFC had not yet received any actual applications from utilities, but there had been some inquiries. Generally, he said, the loans must be secured by a note of the borrower. Asked if equity securities would be accepted as collateral, Mr. Jones said that matter had not been explored; it was possible, he thought, that convertible debentures might in some cases be acceptable. Apparently, however, the RFC does not intend to buy equity securities.

Prospects for at least a prolonged armistice in the intermittent warfare which the administration has waged for years against the utilities seem only partially dimmed by recent adverse developments such as the authorization of a large additional PWA grant to Chattanooga for construction of a competing power system and the antimonopoly suit against Columbia Gas. The SEC doubtless realizes the tremendous problems involved in carrying out the broad but indefinite aims of §11 of the Utility Act, and feels that coöperation will accomplish more than litigation. Mr. Douglas' promise that the tentative plans filed by December 1st will remain confidential (if desired by the utilities) is very encouraging. The President's defense program ties in to a considerable degree with the utilities' own desires for greater interconnection and larger power reserves. It is to be hoped that the troublesome is-

sues which still remain in TVA, Bonneville, etc., will not be allowed to interfere with the harmonious program now being developed, which is essential to restore investor confidence and permit a properly balanced financing of the industry's growth.

Twentieth Century Fund Suggests Including Stocks in "Legal List"

THE Twentieth Century Fund's Committee on Debt Adjustment asserts that "it is too easy to raise capital in the United States by going into debt, compared with selling equities." It suggests an easing, and possible eventual abolition, of the legal restrictions on insurance companies, savings banks, and trustees which force them to invest in so-called high-grade bonds and mortgages. The conclusions of the committee are based on a 3-year investigation by research specialists into the nation's post-war debt structure and its widespread shifts. The report says:

> Most states allow insurance companies and savings banks to invest only in certain types of securities—chiefly mortgages and listed bonds of government bodies, railways, and utility companies — all of which are fixed-interest and repayment obligations. This same list of "legal investments" is commonly specified in trust agreements. The example of the institutional investors to whom these rules apply is widely followed by the managers of endowments and by individual investors. This nearly universal bias in favor of debt as an investment diverts a large part of the nation's savings away from investment in equities.

The committee pointed out that the country's economic experience during 1929-33 demonstrated that the present "conservative" but artificial restriction of investments did not fully protect the investor against loss during a period of declining prices and business activity. "Still less does it protect the investor against loss of commodity purchasing power when prices rise sharply, as happened during the war and may happen again in the next few years," the report declares. "Judged by the security of purchasing power, an investment in common stocks of a well-managed corporation without heavy debt, or in full ownership of unencumbered real estate, may be more truly conservative than an investment in present legals."

The suggested stock investments for insurance companies and savings banks "should be restricted to a small proportion of the credit institution's assets, at least until experience with such investments and the trading of an investment organization makes larger commitments safe," the report says. And it further states:

> Stock investments should also be limited to companies with a reasonably stable earnings record. Furthermore, no one institution should be allowed to hold more than a very small proportion of the stock of a given corporation—both to spread the risks and to prevent a dangerous concentration of economic power in any one concern. The same widened power of investment in real estate and in stocks (with the same restrictions on stock ownership) should be extended to trustees and trust companies investing clients' funds.

The suggestion is of particular interest to the utility industry because the best utility "equities" would deserve inclusion in such an extension of the "legal list," and this would doubtless greatly facilitate the resumption of equity financing, which is deemed highly desirable to maintain a balanced capital structure.

"Monopoly" Charge against Columbia Gas

COLUMBIA Gas appears to be encountering more than average bad luck in its government relations during 1938. While the system's problem in meeting the "death sentence" has been deemed comparatively light due to the geographical concentration of its gas and electric properties, it has encountered difficulties with the SEC regarding the handling of its surplus account back in the 1920's. The utility company has now about completed its necessary accounting adjustments to conform to the SEC ideas. But no sooner was this accomplished than the

Attorney General brought suit against the company under the monopoly statutes in connection with some obscure and long-standing litigation over some minor properties. The new development is described by *The New York Times* as follows:

> In a suit filed in the Federal court in Wilmington, Del., Federal officials accused Columbia Gas of "conspiring" since 1930 to "monopolize" the distribution of natural gas in Kentucky, West Virginia, Ohio, and Michigan. The conspiracy, it is held, came about as a result of Columbia's acquisition of control of the American Fuel & Power Company, Inland Gas Corporation, and Kentucky Fuel Gas Corporation. Following the acquisition of control over these companies, it is charged, competition diminished to the vanishing point and "further competition in new areas was prevented." While the action brought by the Department of Justice is of grave importance to Columbia, there is still another matter far more important that may arise; namely, Columbia's 50 per cent interest, through an affiliate, in the Panhandle Eastern Pipe Line Company, one of the most strongly entrenched natural gas concerns in the country. It is now quite likely that Columbia will be requested to dispose of its equity in Panhandle. This fits in with recent reports that two investment underwriting syndicates had made bids for Columbia's stock equity in Panhandle with a view to public distribution of the securities. On the subject of the antitrust action, since Columbia's total investment in the companies in question aggregates less than one-quarter of one per cent of the total assets of the corporation, the issue may be determined finally in a consent decree.

In a statement issued by Columbia officials, it was pointed out that the gas subsidiaries mentioned above were acquired in 1930, had been in receivership or bankruptcy since 1931, and had never contributed to system earnings. Quoting from the statement:

> The policy of Columbia system has been to maintain and increase its operating reserve acreages as necessary to assure to its present and prospective consumers an adequate supply of gas for all present and prospective increasing demands in the future. This policy has been followed consistently and is essential for the maintenance of the service and stability of the company in its operations. The Department of Justice apparently feels that such policy conflicts in certain cases with the antitrust laws and brings this suit to obtain a judicial determination of the matter. Columbia Gas & Electric Corporation is fully prepared to defend this policy, which has always been in the interest of the public, when this action comes to trial.

Election "Statistics"

THOMAS E. Dewey, recently unsuccessful Republican candidate for governor of New York, in one of his campaign speeches discussed the question of electric light rates as follows:

> Let's look at the typical family in the city of New York . . . Right here in New York, for 40 kilowatt hours, a family pays $2.41. Even in the notoriously ill-governed Chicago the rate is only $1.94—47 cents less a month. New York is 24 per cent higher than in Chicago . . . The bills I have talked about are for low consumption. Now the people who have an electric refrigerator and other electrical servants pay much, much more. They'll use at least 100 kilowatt hours a month. Now what does this cost in New York city? It's $4.72. True they need underground conduits in New York. True some of the costs are higher. But the concentration of population is infinitely greater. Even in Chicago the rate is $3.65—more than a dollar a month less . . .
>
> On March 4, 1935, the Power Authority of the State of New York made a report to the governor. Let's see what they said in this report. They said that the capital structure of the large electric companies serving New York city totals $749,000,000. Now what does that mean? It means that the peoples of New York are paying their bills on the basis of that capital structure. Of that sum the Power Authority reported that $279,000,000 was either water, inflated or obsolete. Thirty-seven per cent of the whole basis for the rate structure was fiction according to the Power Authority of the State of New York. Now, who is right? Is the public service commission of this state right in the rates it fixes? Or was the Power Authority right in saying that 37 per cent of that capital structure is inflation?

Mr. Dewey's attack on the New York utilities produced the following editorial comment from the Republican *Herald Tribune*:

> Injection of the public utility issue into the New York state gubernatorial campaign has attracted little more than passing interest in the financial district. When it comes down to fundamentals, it is difficult to compare rates in one section of the country with rates in another. Customers of a utility in one community may consume more energy

than customers of a utility in another community, in addition to which rate schedules are affected by different labor and material costs, real estate rentals, and taxes. As one observer remarked . . . , no political campaign is complete unless the utility issue is dusted off and used as a tackling dummy for all contestants.

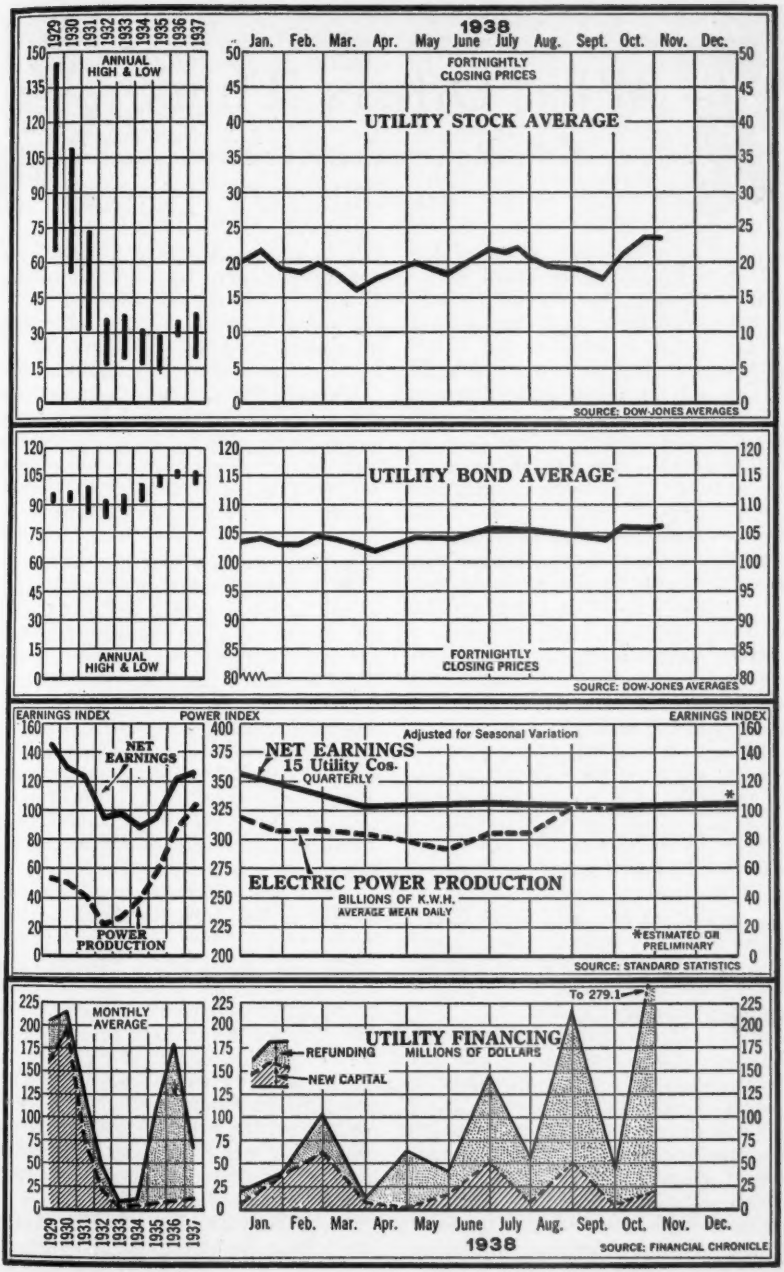
In connection with Mr. Dewey's comparison of electric rates in New York city and Chicago, it may be of interest to compare recent earnings statements of the principal utilities in each city. Commonwealth Edison's total revenue in the twelve months ended June 30th was about $140,000,000, while Consolidated Edison's was some $238,000,000. For convenience, the total revenue of each company is taken as $1 in the following table:

	Consolidated Edison (New York)	*Commonwealth Edison (Chicago)*
The Revenue Dollar:		
Electric revenues	$0.78	$0.90
Gas and miscellaneous revenues	.22	.10
Total revenues	$1.00	$1.00
Disbursement of the Dollar:		
Operating expenses	.49	.44
Depreciation	.07	.12
Taxes	.21	.17
Fixed charges and preferred dividends (less miscellaneous income)	.13	.14
Balance available for common stockholders	.10	.13
	$1.00	$1.00

From the above table, it appears that, despite the higher rates alluded to, Consolidated Edison "brings down" only 10 cents out of every revenue dollar for common stockholders, compared with 13 cents for Commonwealth Edison. If Consolidated charged as much (per dollar of revenue) for depreciation as Commonwealth, the common stockholders' portion of the dollar-pie would be only a nickel—although there might be some offsetting adjustment in maintenance expense. In terms of actual dollars per share earned for the period indicated, Consolidated reported $2.20 compared with Commonwealth's $2.42.

Essentially, Mr. Dewey's campaign speech on utility rates was viewed as an astute political reply to Governor Lehman's earlier statement on the same topic. Mr. Dewey did not commit himself in advance to any concrete course of action, if elected, except to investigate apparent inconsistencies revealed by conflicting reports of two state agencies as operated under Governor Lehman's administration—the New York Public Service Commission and the New York Power Authority. Apparently Mr. Dewey, in referring to utility rates based upon "capital structure," was using that phrase in its broader sense rather than in the more accurate or technical sense in which it is conventionally employed in regulatory discussion.

Without attempting to analyze the Power Authority's old report, it may be remarked that commissions and courts ordinarily use as the "rate base" (on which rates are supposed to yield a fair return) figures based upon a joint consideration of the cost of the investment in the property, or the cost of reproducing it (less depreciation) or some modification of these figures. Questions regarding capitalization and the value assigned in the balance sheet as the equity of common stockholders relate to the proper statement of earned surplus, which sometimes (notably in the recent case of Columbia Gas) may govern dividend policy. Where the amount assigned to stockholders is deemed too high, an adjustment of surplus account (which is also in theory the property of stockholders) is a simple arithmetical operation. It doesn't necessarily take one dollar out of the stockholders' pockets, since it doesn't affect the asset side of the balance sheet in any way. And it doesn't affect rates in the slightest degree unless it involves a corresponding reduction in the value assigned to cost of plant, on the asset side of the balance sheet. But "capital structure" does not usually refer to cost of plant. And the cost of plant which appears in the balance sheet submitted to stockholders is not always the same figure which is employed as a rate base.


1938
ANNUAL HIGH & LOW
FORTNIGHTLY CLOSING PRICES
UTILITY STOCK AVERAGE
SOURCE: DOW-JONES AVERAGES
UTILITY BOND AVERAGE
ANNUAL HIGH & LOW
FORTNIGHTLY CLOSING PRICES
SOURCE: DOW-JONES AVERAGES
EARNINGS INDEX
POWER INDEX
NET EARNINGS
POWER PRODUCTION
Adjusted for Seasonal Variation
NET EARNINGS
15 Utility Cos.
QUARTERLY
ELECTRIC POWER PRODUCTION
BILLIONS OF K.W.H.
AVERAGE MEAN DAILY
*ESTIMATED OR PRELIMINARY
SOURCE: STANDARD STATISTICS
MONTHLY AVERAGE
To 279.1
UTILITY FINANCING
REFUNDING
NEW CAPITAL
MILLIONS OF DOLLARS
SOURCE: FINANCIAL CHRONICLE



What Others Think

New Railroad Securities For Old



In view of the recent action of the President's arbitrative board in refusing to allow the petition of the railroad companies for wage reductions and the more recent indications that President Roosevelt will seek remedial legislation to aid the railroads in the next session of Congress, there is considerable interest in what might be done to solve or alleviate the financial problems of the railroads. This recalls an excellent paper read before the National Association of Securities Commissioners, at Kansas City, Mo., early this fall by Jerome N. Frank, member of the Securities and Exchange Commission. Mr. Frank presented a proposal for a reform of capital corporate structures, particularly those of railroads whereunder fixed interest obligations would be replaced by equity securities.

Although Mr. Frank is prominently identified with the New Deal administration and his address was in the nature of a plea for more reform policies, it was noteworthy that he did not repeat the frequently heard superficial criticism that railroads are too heavily capitalized with respect to bonded indebtedness. This would simply imply that they should go out and sell more stock under security market conditions which makes such a proposal absurd on its face.

First of all, Mr. Frank has had considerable personal experience with the reorganization of railroads, and he knows well enough that railroads cannot sell stock under existing conditions because earnings are not sufficient to attract the most speculative type of investor on a large scale. Mr. Frank is also well enough grounded in political economy to know that the mortgage bond is no longer an effective means of raising capital, as far as American railroads are concerned under present circumstances. In fact, Mr. Frank told the state securities commissioners that the advantages of a mortgage bond to the investor are not as substantial as they might seem.

Hypothetically, a bond is supposed to entitle the holder to legal interest payments in default of which he has the right to foreclose and have the property sold so that his investment may be returned to him from the proceeds.

What actually occurs, however, is not so simple as all that. Railroads as social agents have to keep on operating; so there is a "reorganization" which winds up with the formation of a new company substituting new securities for old ones. Furthermore, in order to attract cash, the new company has to issue new prior lien bonds, which results in the original bondholder being subordinated to a secondary position. Thus, paradoxically, the bond mortgagee may become worse off after a foreclosure than he was before.

Mr. Frank concludes that a railroad bond is really "merely a claim to a portion of the income of the railroad, a claim which ranks ahead of the claim to a portion of that income which is represented by stock." Thereupon, he suggests that this situation be frankly recognized by the substitution of preferred stock for bonds. This, he thinks, would help the situation first of all by removing the railroads from the everlasting threat of receiverships and continuous reorganizations which presently hangs over them like the sword of Damocles.

Next, the inflexibility of railroad costs which now hamstring the management of American railroads in the form of

fixed charges would be eliminated. In compensation for the loss of the doubtful advantage of the right to insist upon a fixed interest payment or to institute virtually futile foreclosure proceedings, the bondholder would be given certain voting privileges upon the default of dividends.

Mr. Frank stated:

> I have been calling your attention merely to the effect of defaults upon individual business enterprises. But the consequences are often of far greater magnitude. When a depression comes, then simultaneously, or almost simultaneously, the earnings of most industries begin to shrink to the point where interest charges cannot be met, and where defaults, over a wide area, accordingly occur. As a consequence, the kind of business paralysis happens which can be overcome only by bankruptcy, not only in one industry, but in numerous industries. And severe contractions in one sector of business augment the difficulties in other sectors so that the effects interact and are cumulative. A long and complicated series of bankruptcies begin, and grow longer and longer. And thus a depression, which might otherwise be restricted in scope, grows rapidly and disastrously. Default-creating interest charges make for bigger and deeper depressions. The creditor is, seemingly, victimized by interest, and the entire economy suffers from tragically serious spasms. Thus a large volume of long-term loans, because of their inelasticity, may threaten to impair the profit system.
>
> The claim on the corporate earnings represented by a share of stock is of a different kind from that represented by a bond. The claim to dividends is elastic and varies with the corporate earnings. If a company fails to pay dividends when its earnings shrink, bankruptcy does not ensue.

MR. Frank went on to point out that investors in bonds have often been fooled by a formal legal protection which may prove to be more apparent than real. The principal trouble with his proposal is, as he admits himself, that our whole investment set-up is now inextricably interwoven with bond financing. The operations of our large insurance companies are founded on bond investment. The laws which cover savings bank investment and trust investment are geared to the concept that a bond is superior to an equity security. A wholesale shift in this set-up could not be made without drastic consequences. Certainly a sudden change along this line might set our entire financial structure tottering and possibly crashing into the depths of inflation and moratoria.

And then there are the other fixed charges of the railroads which Mr. Frank did not mention, but which he would doubtless admit are equally, if not more, pressing than interest payments on bonded indebtedness—such as the hourly wage rates and the tax rates, which seem to be "flexible" only in an upward direction.

However, there is no doubt that Mr. Frank speaks with a true sense of realism when he insists that these are new times which call for at least a "cautious inquiry." We have inherited the financial structure of our railroads from the days when they were expanding and when everybody seemed to expect that they would go on expanding indefinitely. We know now that expansion is at an end—if, indeed, it is not already much in excess of modern economic transportation requirements.

MR. Frank summed up his own proposal in very broad terms as follows:

> The Communists insist that no profit economy can endure — even in these United States. They base that conclusion on severe criticisms of certain unfortunate consequences of past operations of our profit economy. Those, like myself, who do not agree with their conclusion, and who believe that we can, by the careful use of intelligence, maintain a profit system inside our democracy, must pay heed to their criticisms, to the extent that they are valid, and show that a profit system can endure and that our population, inside a political democracy, can flourish by adaptation and changes in our conduct of our profit economy. We must, that is, answer their criticisms by deeds and not by mere angry words. We must reconsider certain of our customary habits and attitudes which grew up and have existed for only a relatively short time, and which today seem to produce highly undesirable effects. We must not be misled by foolish and short-sighted economists who insist that virtually all existing habits and attitudes constitute eternal and immutable principles of action. It has been well said that none of the afflictions of humanity is worse than its obsolete principles. A principle is what a principle does. And we must not be so unwise as to



The Detroit News

—AND POINTS EAST

venerate all our customs, worshipping them under the name of fixed principles or economic "laws," regardless of their human consequences.

It is in that spirit of tentative critical scrutiny that I have suggested cautious inquiry into the device of long-term interest-bearing debts as a means of financing the activities of our major industries. To be sure, if we were, in the future, severely to restrict the use of that device, we would seem to be turning back, in part, to attitudes and habits cherished in the Middle Ages. But that fact would not necessarily indicate unwisdom. Practices once cherished and then abandoned can, sometimes, wisely be revived. Chesterton said that Medieval Christianity had not been tried and found wanting, but had been found difficult and left untried.

It might be remembered in this connection that President Roosevelt several years ago, in commenting upon the desirability of reducing the bonded indebtedness of railroads, added the thought that other public utilities might be in a healthier and more flexible financial condition if they could reduce the proportion of bonds to stock. But unless some unforeseen turn of events occurs, it will require a forthright innovation

such as suggested by Mr. Frank to cut down the ratio of bonds to stock. Certainly the objective cannot be reached in the present security market by the simple method of selling more stock on a wholesale scale.

Power Shortage and the National Defense

UTILITY executives, equipment manufacturers, and the public at large have been following with hopeful interest the work of the President's National Defense Power Committee. The statement of progress made by the chairman of this committee, Assistant Secretary of War Louis Johnson, on October 28th, to the effect that leading utility companies had made definite commitments in the national strategic war material centers to place immediate orders for electric generating equipment totaling a million kilowatt hours' capacity, was hailed as a possible prelude to the end of the long-drawn-out controversy between the Federal administration and the private electric power industry.

This committee was formed by President Roosevelt last September, following the release of a confidential memorandum which suggested the possibility of a power shortage which might seriously jeopardize our national defense in case of a military emergency.

This memorandum, dated July 27, 1937, stated in part:

> Careful studies of trends in the various components of power consumption indicate that, given reasonable prosperity, we may expect an increase in the total market averaging something like 8-10 per cent annually for the next five years (1937 to 1941, inclusive). The rate of growth promises to be somewhat higher in the early part of the period and lower in the later part. If such expectations are realized, an output of 157-172 billion kilowatt hours should be forthcoming in 1941, as compared with 107 billions in 1936.
>
> To produce this volume of power, assuming an annual use factor equal to that in prospect for 1937 (3,400 kilowatt hours per kilowatt of capacity), would require from 12 to 16 million kilowatts of generating facilities in excess of the amount installed at the beginning of the period. The indicated net additions to capacity should average, therefore, 2.4-3.2 million kilowatts a year.
>
> To install this amount of capacity in new steam central stations would require, at the conservative figure of $100 a kilowatt, from 240 to 320 million dollars a year. This compares with an average of 260 millions for the period 1923-1929.
>
> Whether other components of the capital expenditures of electric power companies, such as substations, transmission lines, distribution systems, etc., will need to be as large relative to expenditures for new generating capacity as they were in the '20's, it is difficult to say positively, but there are good reasons to believe that they will not.
>
> For the period 1923-1929 these items absorbed more than twice as much capital expenditure as did new generating facilities. While the ratio for the next five years can only be guessed, if we assumed 1.5 to one, we come out with a prospect for total capital outlays of 600-800 millions a year. This compares with a predepression average of around 800 millions and a 1936 figure of 300 millions.
>
> Whether the continuance of the 1937 capacity-use factor during the next five years will require expenditures near the upper or the lower limit of this range depends, of course, on the movement of construction costs as well as on the growth of power consumption. The estimate is predicated on an average growth rate of 8 to 10 per cent annually, compounded, and present construction costs. If costs rise materially, or if the growth in consumption falls outside this range, adjustments must be made accordingly.

THERE was a mixed reaction when the President first named this special committee on power which included, in addition to Mr. Johnson, Secretary of Interior Ickes, Frederic Delano of the National Resources Committee, Assistant Secretary of the Navy Edison, Chairman Douglas of the SEC, and Commissioner Manly of the FPC. More cynical critics of the administration were wondering if it was merely an adroit move by the administration to promote its public power program. The consensus seemed to be, however, that

this was a genuine effort to provide for national defense, and subsequent conduct of Chairman Johnson would appear to bear that out. Doubtless, the September war scare in Europe helped considerably to mobilize public opinion behind this as well as all other moves in the direction of preparedness.

Under the circumstances, it would not be surprising if the final report of the committee were to disclose the fact that the administration itself must bear some degree of responsibility for the curtailed expansion of the power industry during the past few years. As the *Hartford* (Conn.) *Courant* editorially stated:

> With the government moving against them in such fashion, the producers of power have had no incentive to extend their lines or to enlarge their plants. One conservative estimate is that the utilities of the nation are now $2,000,000,000 behind in capital expenditures, largely because of their justifiable uncertainty concerning the moves that the government might make in the future. No doubt can be entertained that, had the utilities invested the $2,000,000 in plant and equipment during the past few years, the President would have much less reason for uneasiness concerning an adequate supply of power in the event of war. His own destructive policies appear now to have turned back on him in most embarrassing fashion, and the best advice that his committee could give him would be that he indicate clearly and unequivocably that the utilities need have no fear of the government in carrying out the expansion programs that they have not dared to undertake for five years past.

Of course, the administration can point to its own record for promoting the construction of publicly owned power-producing facilities, such as the TVA, but there is serious question as to whether these would much help the so-called "bottlenecks" or potential danger spots of power shortage which are located mostly along the densely populated Eastern seaboard. The regular weekly letter published by the *P.U.R. Executive Information Service* on September 16th, during the height of the war scare in Europe, stated along this line:

> This week's near advent of war in Europe brought to many thoughtful Americans a new view of the administration's power policies. This question was raised: Of what specific national value would the great Federal power plants be if the United States were to become involved in another world conflict?
>
> To some extent they might be utilized in the production of nitrogen—the original reason for the construction of the Muscle Shoals plant—and probably to produce other war materials on a modest scale. But the Federal "bomb-target" hydro plants are not so located as to be capable of serving the strategically situated cities which the President now thinks should be more adequately protected against emergency requirements. They would be of comparatively little value to the many factories along the Atlantic seaboard which, with increased power supplies, might be converted to war purposes.
>
> To the extent that any power shortage may be imminent in certain sections, as alleged by some Federal officials, it can be ascribed largely to the suppression of normal expansion because of administration antagonism toward the industry. Now that an emergency is imminent, Federal officials are preparing to offer government coöperation, financial and otherwise, to encourage expansion and rehabilitation of privately owned systems.
>
> War, if it comes, will prove the mettle of the electric utilities as never before. Their success in meeting the test could sound the death knell of the public ownership movement on the grand scale to which it has been advanced by the New Deal. On the other hand, any failure of the utilities to meet emergency requirements would be seized upon by the public ownership advocates as evidence of the inadequacy of private enterprise.

Again there is the question not only of generating capacity but of distribution facilities and suitable interconnection which would give the nation's power supply a reserve system for emergencies. And this in turn brings up the serious question of whether state and Federal regulatory commissions would be disposed to allow rate adjustments which might be necessary to bear the cost of superimposing upon the existing operating systems (which might be deemed adequate for normal requirements) the expense of reserve facilities designed primarily as a standby for national defense emergencies. The state commissions have not been overgenerous recently in allowing utilities to include in their rate base the cost of more conventional standby equipment.

And if the additional capacity were to be financed by Federal loans, the usual priority insisted upon by the Federal government for its investment under such circumstances might tend to arouse the suspicion of private utility management that they were being tied with one more string held by the proponents of public ownership. As the *Electrical World* stated editorially:

> It is expected that this additional capacity will be provided by the power companies, with government aid where necessary. Thus the power companies, at least in these strategic areas, will be called upon to aid recovery without the administration having to give the industry any relief from the pressure in other directions. The government aid that has been suggested is RFC money to finance added plant or, as an alternative, government-owned plants leased to private utilities.
>
> Both of these alternatives present no alternative, for most utilities would prefer to take a chance on their ability to make both ends meet than to be subjected to added regulation as to management in one case or rates in the other, which these alternatives presuppose.
>
> Legislation enabling the government to build power plants where required as a means of preparedness may be recommended in the committee report. Such plants, though leased to private companies, can be seen only as an entering wedge to public ownership. Necessity for such legislation need never arise, however, if the privately owned utilities accept the situation and make plans promptly to provide the additional capacity.
>
> No matter what motive may be suspected as being back of this present move, there can be no opposition to making expenditures for extra capacity where required for national defense. During the last few days war in Europe, that could easily have involved the whole world, was too close for comfort.

In any event, the energetic Mr. Johnson has shown that he is going to take full advantage of popular support which military preparedness enjoys right now and press for action along these lines with a minimum amount of delay. Nor can the committee afford to let the grass grow under its feet if the national defense objective is to be fully realized. Power plants cannot be built overnight. For the average major project it takes ordinarily two years to bring a new installation into service after the work has actually commenced. And if a flood of orders for turbines, boilers, and so forth, were to come all at one time to the equipment manufacturing industry, which is already pretty busy, the average installation period might run considerably longer.

In terms of national defense, this is a serious consideration in an era when totalitarian governments can decide upon a course of military aggression almost upon the spur of the moment.

—F. X. W.

The REA Reports Progress

Before the 1938 Sectional Meeting of the World Power Conference recently held in Vienna, Germany, a paper presented by John M. Carmody, administrator of the Federal REA, indicates that substantial progress is being made in the field of rural electrification in the United States since the Federal government in 1935 embarked on its program of making direct financial aid for that purpose.

Prior to that time, stated the Carmody paper, the growth of rural electrification had been very slow—only 204,000 or 3.2 per cent of more than 6,000,000 farms in continental United States were receiving high line service in January, 1925—the earliest noted year for such statistics. By 1931, this percentage had increased to 10.2 and by 1935—the birth of REA—it had reached only 10.9, or 743,954 connected farms out of a farm total which had by that time reached 6,800,000. Even these connections, Mr. Carmody pointed out, were mostly along main highways and in relatively denser and more accessible rural regions—in other words, the cream of the rural electrification crop.

Furthermore, he found that such ex-



Los Angeles Times

THE MORE HE GROWS, THE MORE HE EATS!

tensions as were made were on a "highly selective and almost individualistic basis" and in very few instances were any attempts made to develop entire areas.

Mr. Carmody said there were a number of reasons for this slow growth of rural electrification. There was the inability of the farmer to consume quantities of power sufficient to justify the cost of extension. Private companies did not desire to risk the large amount of capital necessary under such circumstances, in view of the more profitable opportunities in more accessible urban markets. He found that the most important barrier was the conditions generally imposed by private companies on farmers as prerequisites to service. Sometimes the farmer had to pay for the line and turn title over to the company and guarantee a minimum charge over a definite period. He found that private companies felt little responsibility to pro-

mote electrification by low construction cost and promotional rate schedules.

NOTWITHSTANDING the slow progress of rural electrification prior to 1930, and the slower increase from 1930 to 1935, the REA chief claimed that the demand by farmers for electric service on reasonable terms increased rapidly, and spontaneous agitation developed in the hinterlands to obtain "substantial modifications in the approach to the problem." A report of the Mississippi Valley Committee in 1934 and a report of the National Resources Committee in the same year both stressed the point that widespread rural electrification in the United States required an approach that could be realized only with the leadership of the Federal government.

Mr. Carmody then sketched the circumstances and events surrounding the establishment of the REA. It is interesting to note that this movement was ushered in as so many other New Deal reforms in 1935 as an "emergency" program "to relieve the critical unemployment situation and stimulate private industry." A year later REA was endorsed by Congress as a more permanent agency when the 1936 Rural Electrification Act authorized a 10-year rural electrification program which would eventually disburse loans totaling $410,000,000. (This was at the rate of $50,000,000 for the first fiscal year ending June, 1937, and $40,000,000 for each of the succeeding nine years.) Later REA was given an additional $100,000,000 for lending purposes during the current fiscal year.

Mr. Carmody then described the mechanics of REA procedure which are doubtless familiar enough to readers of these lines. He touched upon the accomplishments of the REA in lowering construction costs so as to make rural electrification loans more feasible from the viewpoint of self-liquidation. He also touched upon REA territorial differences with private utility companies over so-called "cream-skimming" practices. Since REA was established, construction costs of rural lines have dropped from a minimum of $1,500 a mile to an average of $970 per mile during the last two and one-half years, with indications that the average will eventually go much lower.

He stated also that of the total number of loans made by REA to the end of 1937, "about 85 per cent have been made to coöperatives and other nonprofit corporations, 10 per cent to various public agencies, and about 5 per cent to private companies." During the last two and one-half years (during which Mr. Carmody succeeded Morris L. Cooke as administrator—February, 1937), "the private companies received approximately only 3 per cent."

DISCUSSING the relationship of REA to the coöperative, Mr. Carmody's paper stated:

> Inasmuch as the coöperatives and the nonprofit corporations invariably have been new organizations formed for the specific purpose of borrowing government funds with which to construct and operate rural electric lines, their lack of experience has made it necessary that REA render them expert advice and counsel in connection with the organization, construction, and operation of a project, even though every encouragement is given projects to manage their own affairs on a democratic and coöperative basis. REA does not directly operate or manage any projects. It only counsels in the direction of projects as they get under way and progress toward a self-sustaining basis. These advisory and service activities are essential to assure economical and efficient line construction and operation, to give maximum benefit to the farmers as well as to safeguard the government loan. That the government has a long-term interest in the project is evidenced by the fact that the loans which amount generally to 100 per cent of the cost are made on a 20-year basis and are secured by mortgages on the lines. During the present year the loans bear interest at the rate of 2.88 per cent. Wiring and plumbing loans are made at the same rate of interest but extend over a period of five years. Thus, in addition to loaning funds, REA furnishes guidance and assistance to borrowers from the time they signify a desire for electric service until the loan is completely amortized. To carry on these and other activities, REA has a small staff of approximately 450 persons, about 60 of them being engaged continuously in the field. The field personnel is composed of about an equal number of auditors, engineer-inspectors, and utilization specialists.

Mr. Carmody went on to describe REA technique for examining rural coöperative applications in rendering legal, engineering, managerial, and other assistance. He described group plans for obtaining low-cost installation of plumbing and wiring for which loans may also be obtained from REA and emphasized that loans for the construction of "generating plants are not made by REA unless they are found to be absolutely essential." At the close of the year 1937, a total of 19 generating plants had been thus found to be absolutely essential, either because a wholesale supply from a primary source was not available, or (more often) because REA was not satisfied that the available wholesale rate was low enough.

And now for the progress made since REA has come upon the scene. It is at this point that a sophisticated observer might be inclined to follow Mr. Carmody's statements and figures more critically. First of all, Mr. Carmody keeps using a total figure of 6,800,000 farms, which leaves an implication that ultimately all or most of these farms might be connected to central station service—this notwithstanding the fact that the 1930 census of agriculture listed 2,093,996 farms as having dwellings valued under $500 which on the face of it would seem to make a 100 per cent saturation objective, or anything like it, entirely out of the question as a matter of economic feasibility.

But taking this total of 6,800,000 farms as available—without further question—for electrification purposes, Mr. Carmody's statement points to approximately 1,250,000, or about 18 per cent, as receiving central station service in January, 1938. Thus, states Mr. Carmody with pride, "about one farm in every 6 has electricity today in contrast to the ratio of about one in 10 at the beginning of the year 1935."

MR. Carmody does not give his REA all the credit for this sharp pick-up in rural electrification within the last three years. He refers to the degree of economic recovery in the United States with the increase in farm purchasing power, and the progress made by private companies in this field because they have been stirred from their "apathy" by the stimulation of Federal activity.

Here is the year-by-year program of rural electrification as reported in Mr. Carmody's paper:

Year ending January 1	*No. of electrified farms*	*Percentage of all farms electrified*
1925	204,780	3.2
1926	246,150	3.9
1927	309,125	4.9
1928	393,221	6.2
1929	506,242	8.0
1930	576,168	9.2
1931	649,919	10.2
1932	698,786	10.7
1933	709,449	10.5
1934	713,558	10.5
1935	*743,954	10.9
1936	788,795	11.6
1937	1,042,924	15.4
1938	1,250,000	18.0

*REA established May, 1935.

The eye is immediately drawn to the asterisk which marks the year of the establishment of REA. But what actual and direct effect did REA have upon the difference between the 743,954 farms electrified in 1935 as compared with the 1,250,000 electrified in 1938? This difference represents a total increase of 506,046 farms. Now contrast that figure with Mr. Carmody's statement that at the end of 1937 (which compares with the January, 1938, figure used in his table) "approximately 50,000 farms were receiving electric power from 15,500 miles of line financed with Federal funds." In other words, while Mr. Carmody rejoices over the increase in rural electrification since 1935, it would appear that the REA did not have very much to do with it, at least in a direct manner.

REA was directly responsible for only one-twelfth of the total increase in farms electrified since 1935.

It is only fair to add that Mr. Carmody expects REA to show considerably more actual results in the future.

The report of the status of the REA as of April 22, 1938, is indicated in the following table:

	Dollars	*Miles**
New construction energized	25,754,000	25,754
Under construction but not energized	48,544,000	48,544
Loan contracts executed but construction not begun	10,848,000	10,848
Allotments made but loan contracts not executed	2,263,000	2,263
Applications received for examination but allotments not made	48,028,000	48,028
Applications not ready for examination but considered feasible (approximate)	34,780,000	34,780
Total applications	170,217,000	170,217

*The mileage figures have been computed on the assumption that line costs average $1,000 per mile. Inasmuch as line costs are declining, a group of recent projects reported costs of about $800 a mile, the table understates the number of miles of rural lines being built with REA funds.

It will be noted that although only 25,754 miles of REA lines had actually been energized as of April, 1938, and not quite twice that many more miles were under construction, REA total applications, including those not yet examined, would include 170,217 miles of rural line. Multiplying this by the approximate average of 3 farms per mile of rural line, it would appear that the entire REA program as of that date (April, 1938) comprehended the extension of rural service to approximately a half million farms.

Summing up his program in his own way, Mr. Carmody's Vienna paper stated:

> In connection with the progress and status of government encouragement and aid, at the end of 1937, about two and one-half years after REA was established, approximately 50,000 farms were receiving electric power from 15,500 miles of line financed with Federal funds, and about 150,000 more farms were to receive power from the more than 50,000 miles of line under construction. In other words, at that time, about 66,500 miles of line, to serve approximately 200,000 customers, were under construction or completed. Of the nearly $82,000,000 of allotments made by the end of 1937, more than $77,000,000 were covered by executed loan contracts representing more than 330 projects located in 41 states. As was pointed out in an earlier paragraph, 85 per cent of the borrowers have been coöperative associations or corporations of a nonprofit character. About $2,000,000 of the allotments were for generating plants and equipment, authorized in a few instances because other sources of power were not available, and in other instances because private companies were unwilling to sell wholesale power at reasonable rates.
>
> These data indicate that during the relatively short period of its existence of less than three years, REA, in executing the program provided by the Congress, has already made a substantial contribution to the progress of electrifying the rural areas of the United States. This has been accomplished in addition to building an organization and developing policies and procedures necessary for carrying on the program. Inasmuch as the establishment of REA marked the introduction of the Federal government into a new type of activity, much work of a pioneering nature had to be done in formulating policies, organization, and procedures to reflect the changing character of a developing program.

It will probably take at least another two and one-half years, and perhaps five years, to form any judicious conclusion about the over-all value of Federal government experiments in rural electrification. Mr. Carmody was obviously putting the best side out for the edification of his Vienna audience, which is perfectly understandable—perhaps commendable as evidence of zeal in a public official. Doubtless, also, REA has been responsible for spurring a number of private utility companies into greater effort as Mr. Carmody suggests. Furthermore, if Mr. Carmody's new type, low-cost construction stands up through the sleet storms and other experiences of the coming years as well as it does now while equipment is still newly constructed, there can be little doubt but that REA will have made a valuable contribution to the technical economics of rural power line construction.

But there are other factors that time alone will resolve into an intelligible summary. Assuming REA line construction is sound, what provisions

have been made for maintenance and depreciation? And how well will the coöperatives, with their lack of operating experience, attend to the vital requirement of maintenance? Some cynical utility men have hinted that the coöperatives are no more qualified to supervise their equipment over a long range than would the local lodge of Elks if the management and operation of a rural electric line were suddenly thrust in its hands.

And how many loans will finally repay to the Treasury 100 cents plus interest on the dollar, especially after the first enthusiasm of connected service has subsided? Will it be the same story as the western irrigation ditches which started out as self-liquidating Federal aid projects to help the farmer and so often resulted in outright demands for debt moratorium? And there is the analogous experience the telephone industry went through two or three decades ago when a wave of mutual farmer telephone coöperatives finally ended in a dreary sequel of abandoned and rusted lines, or pleas to commercial telephone companies to take them over at any price. Will the same thing happen to the rural coöperative when the strong hand of Federal paternalism is withdrawn? Time alone can tell. Maybe those who originally sponsored REA "to relieve the critical unemployment situation and to stimulate private industry" will have still further and different plans when its present Ten Year Plan has matured. Time alone will tell.

—F. X. W.

GOVERNMENTAL ENCOURAGEMENT AND FINANCING OF RURAL ELECTRIFICATION. Paper presented by John M. Carmody. World Power Conference, Vienna Sectional Meeting, 1938.

A Plea for Industrial Statesmanship

WITH the growth of modern industry there is less individual enterprise and more piling up of activity in the hands of corporation executives. This places a heavy responsibility upon them to see that those who can no longer employ themselves shall have an opportunity to get jobs. A sound pricing system would be one which makes jobs for all. It is not suggested that business men play Santa Claus and turn over their wealth to the public, or even that they work for nominal pay. All that is asked is that which many progressive business men are already doing: finding ways to organize production so as to supply goods at prices which can be afforded by those who produce the goods.

If the American business man demands the right of freedom of economic enterprise, society may properly ask that he use that freedom in the public interest. This is the challenge which the industrial system makes to the industrial executive. If he cannot meet it, the system of free enterprise under capitalism is doomed to sickness, low vitality, and unproductiveness. This contrasts sharply with the rich natural resources, equipment, and man power that are at the disposal of the American people.

—EXCERPT *from "Industrial Price Policies" by Nourse and Drury.*

The March of Events



Utility Critics Falter in General Elections

A NUMBER of congressional members prominently identified with the so-called "power bloc" in the House of Representatives, or associated with other legislative movements for the restrictive regulation of privately operated utility companies and for the promotion of public ownership of public utilities, failed in their efforts for reëlection in the recent contest which witnessed a general revival in Republican political strength. Representative John E. Rankin of Tupelo, Miss., leader of the "power bloc" in the lower house, was returned to office virtually without opposition. But two colleagues generally in agreement with his anti-utility politics, Representatives Maury Maverick and W. D. McFarlane, both Texas Democrats, were eliminated during the party primaries.

Two other Democratic Representatives, Wearin of Iowa and Lewis of Maryland, lost their opportunity to continue in the progressive House group in the next Congress when they failed in their efforts to move up to the Senate. Wearin lost out in the Iowa primaries to the incumbent Senator Gillette and Lewis in the Maryland primaries lost to the incumbent Senator Tydings.

Representative Amlie, Progressive, likewise lost his House seat in a try for the Wisconsin senatorship. Representative Eicher, Democrat of Iowa, withdrew from the recent race for reëlection.

In the recent elections, however, wholesale casualties overtook members commonly associated with the "power bloc," the exact membership of which has never been definitely ascertained, but which has been variously estimated as between twenty-five and fifty members of the lower house who usually voted together on anti-utility measures during the 75th Congress.

And so in addition to the primary fatalities in this group listed above, the following representatives apparently failed to be reëlected to the next Congress: Bigelow (D.) of Ohio, Binderup (D.) of Nebraska, Boileau (Prog.) of Wisconsin, Cannon (D.) of Wisconsin, Citron (D.) of Connecticut, Eckert (D.) of Pennsylvania, Gildea (D.) of Pennsylvania, Gray (D.) of Indiana, Hildebrandt (D.) of South Dakota, Honeyman (D.) of Oregon, Johnson (F.-L.) of Minnesota, Kopplemann (D.) of Connecticut, McGroarty (D.) of California, O'Connell (D.) of Montana, Phillips (D.) of Connecticut, Sadowski (D.) of Michigan, Sauthoff (Prog.) of Wisconsin, Schneider (Prog.) of Wisconsin, Teigan (F.-L.) of Minnesota, Scott (D.) of California, Transue (D.) of Michigan, Withrow (Prog.) of Wisconsin, Bernard (F.-L.) of Minnesota.

Prominent surviving members generally associated with this House group were Representatives Knute Hill (D.) of Washington, Coffee (D.) of Washington, Fitzpatrick (D.) of New York, Gehrmann (Prog.) of Wisconsin, Hull (Prog.) of Wisconsin, Keller (D.) of Illinois, Kvale (F.-L) of Minnesota, Pierce (D.) of Oregon, Rankin (D.) of Mississippi, Sabath (D.) of Illinois, Voorhis (D.) of California.

Some of these reëlections were extremely close, especially in the case of Representatives Coffee, Gehrmann, and Pierce. Sharpest defeat along this line was suffered in the setbacks received by the "third party" Representatives in Wisconsin and Minnesota. Both the Progressive delegation of Wisconsin and the Farmer-Labor delegation of Minnesota were hard hit.

Repercussions in the realm of utility regulation might also come from the recapture by the Republicans of the Pennsylvania governorship and gains made in the state legislature.

Supplemental Motion Filed

THE Montana-Dakota Utilities Company with principal offices in Minneapolis, Minn., which owns a pipe line extending from the Baker-Glendive gas field in Fallon county, Mont., to Rapid City, S. D.; Miles City, Mont.; Bowman, N. D., and Glendive, Mont., gathering, selling, and transporting natural gas, late last month filed with the Federal Power Commission a supplemental motion to its motion previously filed on October 17th for an order dismissing the complaints of Capital Gas Corporation, Montana Eastern Pipe Line Company, and John Wight, all of Montana, alleging discrimination by the Montana-Dakota Company in the purchase of natural gas and excessive charges.

In its motion to dismiss filed October 17th, the Montana-Dakota Utilities Company advanced the claim that it does not sell such gas to any other company or individual for resale for ultimate public consumption, has never

transported gas for others and hence is not subject to the provisions of the Natural Gas Act. Complainants, the respondent alleges, own no collecting or distributing lines; have never tendered any gas for shipment through the pipe lines of defendant, which purchases the gas they produce; do not control any gas which could be so tendered for shipment, and hence cannot question the reasonableness of defendant's tariffs. Contending that the markets involved are already being adequately and satisfactorily served by the defendant, it points out that none of the complainants has obtained from the commission the certificates of convenience and necessity required by the Natural Gas Act to extend their facilities and sell natural gas in such markets.

Respecting the complaint that the defendant has violated the act of February 25, 1920, as amended. (U. S. Code Title 30 §185) in allegedly purchasing gas from complainants and others at too low a price and in a discriminatory manner, the defendant contended that jurisdiction to enforce that act lies solely in the Interior Department, and that the FPC has no jurisdiction to pass on alleged violations of said act.

FPC Announces Gas Order

THE Federal Power Commission on October 31st announced its order directing the Northern Natural Gas Company to show cause by December 1, 1938, why that company should not extend its facilities to serve the territory sought to be served by the Kansas Pipe Line & Gas Company through the construction of a 1,040-mile main transmission natural gas pipe-line project, application for which is pending before the commission.

In the same order, the Northern Natural Gas Company was directed to show cause why it should not become or be made a party to the proceedings before the commission on the application of Kansas Pipe Line & Gas Company, and why the commission should, as Northern Natural has requested, assume jurisdiction over the Kansas Company's application on the ground that the Kansas Company seeks to enter the market of Northern Natural Gas Company.

The show cause order was adopted after a decision that it would be necessary, in considering the Kansas Company's application for a certificate of convenience and necessity for the $21,470,000 development, for the commission to determine: (1) whether the construction or extension of the proposed facilities by Kansas Pipe Line & Gas will constitute transportation to or sale of natural gas in a market in which natural gas is already being served by Northern Natural Gas Company; and (2) whether Northern Natural Gas Company should be directed to extend or improve its transportation facilities or establish physical connections to the end that adequate facilities will be afforded for the service of natural gas in the territory sought to be served by Kansas Pipe Line & Gas Company.

The development proposed by Kansas Pipe Line & Gas Company would serve 128 communities and other markets in the states of Kansas, Nebraska, South Dakota, North Dakota, and Minnesota, and in acceding to the commission's request that it file an application for a certificate of convenience and necessity for the project, the Kansas Company averred that the market it proposes to serve is not a market in which natural gas is already being served by another natural gas company, and it is therefore not incumbent upon the Kansas Company, under §7(c) of the Natural Gas Act, to procure a certificate of convenience and necessity.

The project has been opposed by the National Bituminous Coal Commission, the National Coal Association, the United Mine Workers of America, and four other coal interests, all of which have sought to intervene in the proceeding. Oral argument on the coal interests' petitions to intervene was heard by the full commission on October 21st, as was argument on a motion of the Kansas Company that these petitions be denied.

FPC Original Cost Division Begins Work

ORIGINAL cost of properties devoted to utility service being the new basis of electric utility accounting under the Uniform System of Accounts prescribed by the Federal Power Commission, which system also has been adopted in principle by 24 state regulatory commissions, the Federal commission has established in its Bureau of Finance and Accounts a Division of Original Cost to conduct this work.

Beginning active work in coöperation with state commissions, A. R. Safeblade, acting chief of this division, two accountants, and one engineer from the Washington headquarters of the FPC met recently at Louisville, Ky., with Hugh Bearden, consulting accountant for the public service commission of that state, to begin a joint examination, with representatives of the Kentucky commission, of the accounts and records of the Louisville Gas & Electric Company.

This was the first examination of the kind to be made under the new accounting system. Meeting with representatives of the Wisconsin Public Service Commission early this month, a similar coöperative examination of the accounts and records of the St. Croix Falls Wisconsin Improvement Company, a public utility within the meaning of Part 2 of the Federal Power Act, was to be begun. Both these examinations dealt with electric properties only.

On or about November 21st, the third of these examinations, a joint examination of the accounts and records of the Arkansas

Power & Light Company, was scheduled to begin, in coöperation with the department of public utilities of the state of Arkansas.

Bonneville Rate Announced

ELECTRICITY from Bonneville dam will be sold to housewives and farmers at one-half to 2½ cents a kilowatt hour, Administrator J. D. Ross announced late last month. The rates, he said, are far below any existing private company schedules. Mr. Ross declared they were "a mark for public bodies to shoot at, a standard which they can attain and exceed."

The Bonneville rates will serve as a yardstick in the sale of electricity to homes throughout the Northwest, officials said. Ross said public districts, cities, and coöperative associations selling Bonneville power will be required to observe the rates in serving homes.

A minimum bill for householders was set at 50 cents a month. This, Ross said, would pay for 20 kilowatt hours. The household rate, which he said would be one of the lowest in America, would be intended to furnish ordinary electricity needs to homes at about $1 a month.

At the start, he said, most public agencies would have to charge more than the objective rate where there is "duplication of distribution facilities" resulting in uneconomic competition. Ross said the resale schedule would be the uniform pattern for Northwest districts but would not apply to electricity distributed to private utility systems.

Mr. Ross on November 1st revealed the route of Bonneville transmission lines which will "pipe" Columbia river power to Oregon and Washington communities. At the same time, Administrator Ross announced location of the principal substations in the Northwest power network and called for bids on nearly $750,000 worth of equipment to be installed at these sites.

The Portland substation will be located in the St. Johns area, while other Oregon transformation centers will be erected at The Dalles, Hood River, Oregon City, Salem, Albany, and Eugene.

Initial Washington substations will be erected at Vancouver, Aberdeen, Yakima, Kelso, Chehalis, Raymond, Cathlamet, North Bonneville, and Grand Coulee.

Bids on substation equipment, to be opened November 29th in the Bonneville project offices, call for huge switches designed for operation on 110,000 and 220,000-volt lines. Thirteen of the switches are to be delivered within four months after the contract is awarded, it was said.

Ross pointed out that the initial transmission lines do not constitute the entire Bonneville system.

Alabama

Rates Ordered Reduced

THE state public service commission on October 28th ordered the Birmingham Electric Company to place all its residential customers on a lower rate, effective December 5th. Commissioner Fitzhugh Lee estimated the saving would approximate $85,000 annually for the domestic consumers.

The commission declined to approve a new "objective" rate submitted by the company, but did change from $1 to 70 cents the monthly minimum of the prevailing objective rate. The objective rate has been available since 1935 to residential customers using more electricity in any month than they did in the same period the year previous. Otherwise, the "standard" rate prevailed.

In establishing the "objective" rate system, the state commission specified that when 50 per cent of Birmingham Electric's consumers used 50 or more kilowatt hours per month the objective rate should replace the standard rate for all customers.

The new objective rate ordered into effect is as follows: 3-9/10 cents for the first 50 kilowatt hours; 2½ cents for the next 250; 1½ cents for all over 300.

California

Refund Rehearing Asked

A MOTION for a rehearing of a 3-judge visé of a state railroad commission order to refund more than $6,000,000 to natural gas users of northern California was filed with the Federal court on October 21st by the Pacific Gas and Electric Company.

The company presented 13 reasons for the rehearing, among them being the contention that the court cut down the valuation of company property too far. The company placed a valuation of $112,300,000 on its properties. The state commission reduced this to $105,000,000. When the Federal court finished with it the figures read $90,500,000.

The company alleged, also, that the court erred in taking suggestion that butane gas be

used for standby purposes. Such a procedure, the company argued in its motion, would necessitate adjustment of the burners of all customer apparatus.

Colorado

PWA Power Project Delayed

WHETHER Colorado will accept $315,000 from the Public Works Administration for construction of a $700,000 power plant and workshop was undecided on November 1st after a meeting of the state executive council behind closed doors in the office of Governor Teller Ammons at Denver.

Action on the acceptance of the PWA offer, which was tendered October 31st, was deferred and Secretary Jacob Willson was instructed to telegraph George M. Bull, regional PWA director at Fort Worth, Tex., asking for an extension of time, because the executive council agreed that its contract with the Federal government could not be completed within the prescribed limit for acceptance, which was November 4th.

The reason for the delay in the acceptance was ascribed to the difficulty of the state in acquiring a site for the power plant.

Florida

Water Rates Cut

TWO ordinances and a resolution, designed to cut gross water rates in Miami by 16⅔ per cent, or approximately 25 per cent from the amount collected by the Miami Water Company, were adopted by the city commission last month, after a representative of the company was denied additional time to present an inventory of the distribution system.

The resolution was the commission's formal "findings of fact," based on a $15,000 survey recently conducted by Utility Consultant Carl F. Lambert and the firm of Burns & McDonnell, which showed the rate base of the company should not be "more than $4,000,000," with expenses allowable of approximately $365,000 a year.

The first ordinance established rates to be charged by the city of Miami for producing, treating, and supplying water, commonly known as the surcharge of $1.50 a quarter on minimum bills. This would remain unchanged under the new set-up.

The second of the ordinances provided a rate reduction of approximately 25 per cent in all classifications, to be charged by the water company, for distribution to consumers. It was said this would mean a saving from current minimum bills of $4.50 a quarter, to $3.75.

H. H. Hyman, vice president of the water company, made a brief statement and read a formal letter into the record asking until November 30th when he said the company could present a complete inventory of its properties. His request was not granted.

Bryan C. Hanks, president of the water company, previously had told the commission his concern would fight any attempt to fix new rates based upon a lower rate base than that now established at approximately $6,000,000, it was said.

Illinois

Claims Phone Rate Refunds

ATTORNEY General Otto Kerner early this month filed a brief in the U. S. District Court of Appeals claiming the state's right to $1,600,000 of telephone rate refunds ordered in 1934 and still unclaimed by subscribers of the Illinois Bell Telephone Company. In 1934 the United States Supreme Court ordered the company to refund $18,798,980, together with 5 per cent interest, for overcharges on coin box rates since 1923.

In its brief, the state contended the company had no right to the $1,600,000, and it should be turned over to the state as the representative of the people. This, the brief pointed out, is in accordance with the English common law which receives its binding force from immemorial usage and universal reception. Under its terms all personal property without a legal owner becomes the property of the sovereign.

The company, by the Supreme Court ruling, was given three years, until June 1, 1937, to locate the subscribers to whom refunds were due. Last February the U. S. District Court granted the company permission to retain the unrefunded money, except for $60,000 awarded to the state commerce commission and $37,000 to the city of Chicago for certain expenses.

Indiana

Phone Order Expected

AN order in the Indiana Bell Telephone Company Case pending before the state public service commission probably will be issued before the Christmas holidays, Perry McCart, chairman of the commission, announced recently.

Conferences between company officials and members of the commission were called off early this month until after the November 8th election and were to be resumed shortly thereafter.

McCart indicated the conferences, once they were resumed, would end in a few weeks and the case would be taken up at a formal hearing as it was before the private conferences were started. McCart said the privacy of the conference room would afford the state commission and the company attorneys a chance to agree on basic points in the case without long-drawn haggling in a hearing and would shorten the session when it was resumed. He announced he expected the commission and the company shortly to agree on what constitutes a fair rate of return on the telephone property.

An appraisal and audit of the company's property and books, he said, was being completed by public service commission engineers and would be used by the commission when it sets a value price on the company's property.

Wins Plant Fight

THE Southern Indiana Gas and Electric Company must sell its light plant at Boonville to the city under a ruling handed down recently by Special Judge Ralph E. Roberts, Rockport, in a city condemnation suit.

Citizens voted for a municipal electric plant December 19, 1935, but the company refused to sell.

Gas Suits Set

TWO suits involving a 99-year lease executed in 1933 between the Citizens Gas Company and the old Indianapolis Gas Company will be tried in Federal court before Judge Robert C. Baltzell on January 5th.

A pretrial conference of attorneys and Judge Baltzell will be held on December 3rd. The suits involve validity of the lease, which the Citizens Gas and Coke Utility, formerly the Citizens Gas Company, asserts is unreasonable. Lease money has been paid in escrow since the start of litigation.

Kentucky

Power Franchise Discussed

DISCUSSION of the sale of a new power franchise between Paducah officials and representatives of the Kentucky Utilities Company, ended, at least temporarily, on October 24th, when the board of city commissioners, by a unanimous vote, authorized City Manager L. V. Bean to "ascertain the proper procedure in obtaining a municipal light plant."

The action, in the form of a resolution, was brought by Commissioner S. B. Pulliam. The order came shortly after board members met in an adjourned conference with the power company's officials. In taking the action, board members indicated a point was reached in the franchise issue which necessitated investigation of the possibility of the city acquiring a power plant before continuing the discussions with the utility company.

Commissioner Pulliam said he believed the city should establish whether it could purchase a power plant at the present time, before considering sale of a new electric franchise. The franchise held by the Kentucky Utilities Company expires in April, 1940.

City commissioners had indicated they would sell a new franchise provided the agreement contained a "recapture clause" provision giving the city the right to purchase the plant any time during the life of the permit. The power company, which was seeking a 20-year franchise, rejected the proposal.

Louisiana

Telephone Plan Approved

THE application of the Southern Bell Telephone & Telegraph Company for authority to convert the Baton Rouge exchange into an automatic with an increase in rates in the old base area and an adjustment of rates in the other sections by reason of an extension of the base rate area was approved by the state public service commission early this month.

The company accompanied its petition to the state commission with petitions of local

subscribers asking for the conversion. The petition contained the names of 82 per cent of the telephone subscribers in Baton Rouge.

The telephone company told the commission that it was its plan to expend about $1,167,000 on a new telephone building and on entirely new equipment for the Baton Rouge exchange. The telephone company said from eighteen months to two years would be required to put the new exchange in operation.

Missouri

Natural Gas Assured

ST. Louis was virtually assured of 100 per cent natural gas in the near future at a hearing at Jefferson City on October 26th before the state public service commission, when attorneys for the Laclede Gas Light Company asked a continuance of the hearing on the feasibility of the distribution and sale of straight natural gas in St. Louis and St. Louis county. In asking for the continuance, Guy A. Thompson, attorney for Laclede, declared his client was collaborating with officials of the Mississippi River Fuel Corporation to work out an "adequate price scale" to permit use of natural gas. Commission Chairman J. D. James granted the continuance until December 5th, with the definite understanding no further continuances would be granted.

Thus, Thompson indicated the battle for natural gas in St. Louis instituted by the public service commission as far back as February, 1935, with the last hearing prior to the hearing of October 26th held in August, 1937, was on the verge of settlement, with St. Louis gas consumers receiving the benefit. Just what reduction in rates would accrue officials of Laclede and the Mississippi River Fuel Corporation declined to say. It was intimated the reduction would depend upon the "cost of the gas to Laclede," as well as the possibility of increased consumption.

St. Louis now uses approximately 5,000,000 cubic feet of gas daily, which is a mixture of natural and manufactured gas and the residue of petroleum. Impartial engineers stated lower cost, possibly through the use of natural gas plus the additional heat units, would tend to increase the consumption of gas in St. Louis to approximately 8,000,000 to 11,000,000 cubic feet.

Nebraska

Drop Plant Negotiations

CITY councilmen at a special meeting early this month decided to drop further negotiations for the purchase of the Iowa-Nebraska Light & Power system at York, and to advertise for bids for construction of a municipal power plant and distribution system. Councilmen pointed out their efforts to negotiate gave no promise of satisfactory progress.

Robert Fulton, special engineer, submitted plans for a generation and distribution system and estimated its cost at $425,000. The council set December 9th for opening bids and letting the contract, and fixed June 1, 1939, for completion of the plant.

Voters authorized the council last March to enter the municipal field, either by purchase or construction. Debenture bonds will be issued, to be paid off from plant earnings.

Vote on System

THE Loup city council recently passed an ordinance calling a special election for December 13th to decide whether the city shall acquire the generating plant and distribution system of Western Public Service Company.

New York

Rate Refund Ordered

THE state public service commission last month ordered the Queens Borough Gas & Electric Company, a subsidiary of Long Island Lighting Company, to refund more than $500,000 to its general electric consumers in the fifth ward of the borough of Queens and in a portion of the southeastern section of Nassau county.

The refund represents the temporary reduction of 15 per cent in electric rates which the commission ordered in 1933 for a one-year period, together with accrued interest at 6 per cent from the date of payment to the date of refunding. The company secured a stay in the courts which prevented the reduction from becoming effective at the time it was ordered.

The company is to start making the refunds not later than December 1st.

South Carolina

Votes Purchase of Abandoned Project

THE abandoned Rocky river hydroelectric project came a step nearer completion last month after the Abbeville city council voted to buy the dam for $145,000 and complete it as a PWA project.

The Public Works Administration has allotted a $239,000 loan and a $196,000 grant to finish the project, started four years ago as a private enterprise by J. Roy Pennell of Spartanburg. Damming of the stream will create a lake 13 miles long and a mile wide, all but a few acres in Abbeville county.

Except for 175 acres all the land to be covered by the project has already been bought. Estimates place the proposed plant's output at 8,500,000 kilowatt hours primary power, and 2,280,000 kilowatt hours secondary power—three times the amount Abbeville now uses.

Tennessee

Board Kills Bond Vote

THE board of mayor and aldermen of Shelbyville, on November 1st at a called session, voted 5 to 1 to rescind its action of a month previous in calling a referendum November 8th on a proposal to issue bonds to construct a $160,000 power system to distribute TVA current.

The action was taken at the November 1st meeting after Alderman Eustace Williams, leading the fight against the referendum, maintained that the bond issue would saddle an obligation upon the taxpayers. Mayor Hulan, who favored the bonds, said the amount of the issue could be met with the proceeds from the sale of electricity to Shelbyville consumers.

The city is now served by the Tennessee Electric Power Company.

Chattanooga Speeds Plan

WENDELL L. Willkie, president of The Commonwealth & Southern Corporation, on November 1st announced that he had received a telegram from the Electric Power Board of Chattanooga, notifying him that the Federal government had given its "final approval to a further gift and loan of $3,279,000 to Chattanooga for the construction of a competitive power distribution system in that city."

Declaring that he had "repeatedly expressed a willingness" to work out the competitive power problem in the Tennessee valley region through the sale of entire properties in that area to the TVA directly or to municipalities, Mr. Willkie added that "gifts and loans" to date made by the Federal government to Chattanooga approximated $7,500,000. Mr. Willkie asserted:

"Chattanooga is now supplied by the Tennessee Electric Power Company, an operating unit of The Commonwealth & Southern Corporation; the competitive system to be built with gifts and loans by the Federal government will receive its wholesale supply of power from the Tennessee Valley Authority.

"The Chattanooga Power Board has asked me to take up negotiations for the piecemeal sale of the Tennessee Electric Power Company, saying that in view of the additional money provided by the Federal government that Chattanooga's construction program is progressing rapidly and that if competition is to be avoided and the Tennessee Company saved from destruction there must be an immediate sale of such parts of the company as can now be sold."

In the opinion of city attorneys and officials, there is only a remote possibility that Nashville will come anywhere near getting TVA power until after the general assembly. They were said to believe it would be necessary to amend the act creating the Board of Transportation Trustees before the board would have the power to issue bonds for either the purchase of the present power distribution system of the Tennessee Electric Power Company or for the construction of a separate city distribution system.

Mayor Thomas L. Cummings, who has been active in studying means of bringing TVA power to Nashville, on November 1st received a reply from David E. Lilienthal of the TVA whom the mayor asked for information on the procedure for getting TVA power. He was expected to make formal application for TVA power under authorization granted him by the city council.

PWA Warns City

THE city of Paris received notice last month that a $135,000 PWA grant would be rescinded if work has not been started by December 20th on proposed improvements to the local power and water system.

The city recently agreed to purchase local properties of the Kentucky Light & Power Company for approximately $150,000 in addition to assuming $330,000 in old bonds. Improvements on the system would cost about $41,800.

City Engineer John Sweeney said Tennessee

Valley Authority engineers had adopted a plan under which TVA power would be distributed in the city over present transmission lines, eliminating construction of a substation.

City Engineer Sweeney subsequently announced that governing bodies of 28 west Tennessee communities served by the Kentucky-Tennessee Light & Power Company had approved an agreement calling for blanket purchase of the utility's properties in the Paris area. Sweeney said utility directors and officials of the Tennesee Valley Authority also had approved the agreement.

FPC Authorizes Sale

THE Federal Power Commission on October 31st announced its authorization of the sale by Kentucky-Tennessee Light & Power Company of certain properties located in Clarksville and vicinity to the city of Clarksville for the sum of $260,000 cash, in accordance with an agreement dated September 12, 1938, between the Kentucky-Tennessee Company, the city of Clarksville, and the Tennessee Valley Authority, which will supply power to Clarksville through the newly purchased facilities.

Application for the commission's approval of the transaction was filed by the Kentucky-Tennessee Light & Power Company on October 7, 1938, and the applicant, by letter dated October 14, 1938, waived opportunity for a hearing on the proposal.

The commission's order authorizing the sale stated that, in its estimate of the effect of the transaction upon its remaining public utility operations, the Kentucky-Tennessee Company had indicated that neither its financial integrity nor its ability to render service to its other consumers would in any wise be impaired; and that the proposed sale would avoid duplication of facilities and destructive competition, and would enable its transferred customers to obtain the benefits of cheaper rates.

The facilities involved in the transaction included all the electrical properties of the Kentucky-Tennessee Company, both real and personal, of every kind and description in the city of Clarksville and in Montgomery county, Tenn., including a distribution system in New Providence, Tenn., and approximately 110 miles of rural distribution lines in Montgomery county, Tenn., and Christian county, Ky. The facilities in Kentucky consist of a short extension from the Tennessee state line to and near Edgeton, Ky.

Plan Approved

MAYOR W. W. Mynatt's plan to separate the electric and water utilities from the city government of Knoxville and place them in the hands of a nonpolitical board won quick approval on October 27th from thirty business leaders of the city.

The business leaders not only approved the plan but commended the mayor for his "unprecedented" attitude in seeking to divest his own administration of "power and authority." The mayor said candidates for the legislature had been supplied with copies of the draft.

Major points of the bill, which was drawn by Law Director W. W. Kennerly after consultations with "three or four leading attorneys of Knoxville," were:

Creation of an electric power and water board of five commissioners, appointed by the mayor and confirmed by city council, the first board to be designated by the mayor for terms of two, four, six, eight, and ten years. As terms of these commissioners expire their successors will be appointed for ten years each.

The board will appoint a general manager who shall serve at the board's pleasure. Under the manager will be three bureaus: water, power, and accounts, each headed by a superintendent.

Independent control will be vested in the board and it shall "have and exercise all the powers and duties possessed by the city of Knoxville to operate the system." It shall be "free from the jurisdiction, direction, or control of other city officers and employees of the city council."

It shall fix rates, subject, in so far as electricity is concerned, to the wholesale contract with TVA.

It can make extensions, borrow money, have the right of eminent domain, invest surplus funds, fix salaries, require deposits, engage in promotion expenditures, must have independent audits made, and report to city council semiannually.

The board must pay a sum, equivalent to taxes, to the state, city, and county.

It is required to fix rates to meet its obligations.

It must participate in the city employees' pension fund. Superintendents, subject to approval of the manager and of the charter's civil service provisions, shall have the right to appoint, promote, demote, transfer, and remove.

Commissioners may be removed under the state ouster law.

Texas

Lower Rates Sought

LOWER gas rates for Dallas residential users, as well as a reduction in electricity charges for industrial patrons, will be sought within the next few months by Utilities Supervisor Joseph F. Leopold, he announced early this month.

Mr. Leopold was to begin conferences with officials of the Dallas Gas Company this month looking toward possible reductions in the fuel rates. He said he believed this should be done because the refinancing program carried out by the Lone Star Gas Company, parent concern of the local company, enabled it to save money that should be passed on to customers.

Negotiations already were under way with the Dallas Power & Light Company for a lower industrial rate, it was said. This request was based on reports that the company could save money in the cost of gas it uses for firing boilers at generating plants. The company buys gas from the United Gas System, Leopold said, higher than it could be purchased from the Lone Star Gas Company, and he believes this saving should be effected and passed on to consumers.

Reduction Fails to Materialize

PREDICTED reduction of 30 to 50 per cent in Austin electric rates dwindled to 10 per cent under an agreed first step by the city council recently to pass on to consumers the benefits of cheap charges resulting from the $26,000,000 Lower Colorado River Authority water power project.

Austin, which for years has maintained a municipal system, became the first city to begin use of the hydroelectric power on which had been based promises of material reductions. George Grant, city finance director, estimated that the reduced rates would save $106,294 for 16,200 consumers who pay about $1,095,000 for electricity in a normal business year.

A reduction applicable to all residential consumers is 1.5 cents per kilowatt hour in the lowest consumption bracket. Heavier cuts were made in other brackets that affect a portion of the users who do not have major electrical appliances in their homes.

Rates to become effective with billings as of January 1st are: First 30 kilowatt hours, 6 cents per kilowatt hour; next 50, 3.5 cents; next 200, 2 cents, and all over, 1.5 cents.

Washington

Plan Tax on Public Plants

THE state grange, through its attorneys, was reported early this month to be preparing to offer to the next state legislature a constitutional amendment which would give authority to levy taxes on publicly owned utilities, the same as on privately owned utilities. Ervin E. King, state grange master, said:

"Under the terms of the Constitution, publicly owned utilities are exempt from taxation. Municipally owned plants pay the same excise taxes as private companies but pay nothing on physical properties. It is planned to remove the constitutional exemption now enjoyed by publicly owned utilities and leave the enactment of the law to the legislature.

"In view of the fact that nearly a score of utility districts have been or are being organized, the question of taxation becomes a live issue."

In Seattle, the utilities which could be taxed are City Light, the Municipal Railway, and the Water Department.

West Virginia

Coöperative Gets Certificate

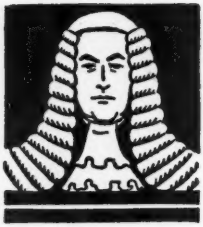
THE Hardy County Light and Power Association, REA-financed coöperative, was granted a certificate of convenience and necessity on November 1st by the state public service commission, over the protest of the Potomac Light and Power Company. The commission voted 2 to 1 to grant the certificate, with Chairman John J. D. Preston dissenting.

The decision, which came at the final session of a hearing on the coöperative's petition for a certificate, gave the association permission to go ahead with nearly 150 miles of lines to serve more than 500 rural families.

The state commission excepted the Lost River valley, in which the Potomac Light and Power Company has the sole right to furnish electricity. It also restricted the Potomac concern from extending lines other than those now under construction. The coöperative may extend its lines in Hardy county, however, with the exception of the Lost River valley.

The Hardy County Light and Power Company had asked the state commission not to declare it a utility, but if it did, to issue a certificate of convenience and necessity. The commission also had declared such organizations utilities and thus under its jurisdiction in the case of the Harrison county association, also financed by the Rural Electrification Administration.

The Hardy county organization was formed more than a year ago but ran into difficulties when the state road commission declined to permit power lines to cross state highways and referred the matter to the state public service commission.



The Latest Utility Rulings

Filing Rate Increase to Change Contract Rate

THE supreme court of New Jersey upheld the right of a public utility company to effect an increase in rates fixed by contract by filing a schedule containing a higher rate. There were said to be two methods by which rates might be increased: first, by filing a revised schedule, and, second, by filing a petition asking the commission to fix an increased rate. The court said that the commission had recognized the filing of a rate schedule by a utility, when no order of suspension followed, as a lawful and effective means of changing the heretofore existing rates. The court added:

> How many instances there may be of the changing of contract rates by the filing of new and unsuspended schedules and what unsettlement of incidents heretofore thought to be closed would be effected by avoiding of the existing practice, we do not know, but we consider that under the circumstances no overturn of the accepted construction of the law should be made upon a nice balancing of the argument.

The question whether the water company had actually filed an increased rate was also presented. The company had filed a petition with the commission stating that a rate higher than the contract rate would be put into effect after a period of thirty days, and the petition requested that the higher rate be fixed and allowed by the commission. The commission neither suspended nor approved the rate nor took any other action. The court ruled that the filing of the petition served as a filing of the increased rate schedule. *New Jersey Suburban Water Co. v. Town of Harrison, 1 A. (2d) 61.*

Judicial Review of Commission Order Denying Right To Transfer Property

TWO important points are involved in a proceeding by the Pacific Power & Light Company and the Inland Power & Light Company before the Federal Circuit Court of Appeals, Ninth Circuit, to review an order of the Federal Power Commission denying them the right to transfer all the property, rights, licenses, and assets of Inland Power & Light Company to Pacific Power & Light Company. One of these points relates to the propriety of a judicial review of such an order. The other point, frequently raised and controverted before regulatory commissions, bears on the necessity of showing that the public will benefit from a proposed property transfer.

The Federal Power Act provides that no public utility shall transfer property subject to the commission's jurisdiction without securing the consent of the commission. If the commission finds the proposed property transfer "consistent with the public interest, it shall approve the same." The companies contended that the order rested upon a finding contrary to the evidence and also that the commission erred in holding that the phrase, "consistent with the public interest," requires a showing that benefit to the public will result from the proposed merger of facilities before it should receive commission approval. The court did not pass upon the merits of

these contentions, but, for the purpose of passing on a motion to dismiss, went on to the question of the propriety of review.

Dismissal was asked by the commission on the ground that the commission's denial was negative in form. The court denied the motion on the ground that the final order denied a substantive right; that the order was an affirmative decision that the right to merge did not exist. It was pointed out that if the contention of the commission were correct, no remedy existed in the event that a right to the consolidation had been conferred which had been unjustly denied by the commission.

The provision of the statute, it was said, is not part of an act for the suppression of monopolies. On the contrary, public utility companies supplying electric light and power in many cases, if not most, it was pointed out, are given monopolies of certain areas of distribution, and their rates are controlled by public regulatory bodies. Circuit Judge Denman, speaking for the court, said in part:

> No doubt evils may arise from overconcentration of power in consolidations of utility companies. It is equally apparent, on the other hand, that the public interest may best be served by economies arising from the diminution of competing units or the acquisition and immediate ownership of the physical properties of a subsidiary corporation by what had theretofore been its holding company. Where such savings are made, they will be reflected in the regulated rates to the interested public.

The court stated that it was not in accord with the opinion of the second circuit in Newport Electric Corp. *v.* Federal Power Commission (1938) 97 F. (2d) 580, 25 P.U.R.(N.S.) 40. *Pacific Power & Light Co. et al. v. Federal Power Commission, 98 F. (2d) 835.*

Stockholders to Be Informed of Stock Purchases by Holding Company

THE Securities and Exchange Commission, in approving the acquisition of additional shares of stock of the Central Illinois Public Service Company by the Middle West Corporation, imposed the condition that the Central Illinois should at the expense of the Middle West, in the next regular communication to preferred stockholders, enclose a letter informing them as to stock acquisitions and as to authorization by the commission for the purchase of additional shares.

The commission said that the Middle West Corporation, a registered holding company, in acquiring these stocks of its subsidiary, was pitting its investment judgment against those who sold to it and that this condition should be inserted in the approval order so as to avoid any possibility that the holding company was using its superior knowledge of the affairs of the subsidiary to buy stock from uninformed investors. *Re The Middle West Corp. (File Nos. 46-77, 46-97).*

Rate Reduction Based on Uncompleted Voluntary Agreement

A VOLUNTARY agreement on the part of a gas company operating a municipally owned gas plant under lease was held by the Pennsylvania commission to indicate that a maximum rate set forth in the agreement would give the company a fair return on the fair value of its property used and useful in the public service and that the commission was required to invoke the broad powers of the Public Utility Law to order a reduction to that amount although the said agree-

ment had not been signed by the mayor.

The company had in effect rate schedules agreed upon between a predecessor company and the city. The tariff had been filed with the commission for its general information, with the reservation that the commission had no jurisdiction over the rates. The commission, after holding that it had such jurisdiction, considered the question of ordering a rate reduction under the provisions of the law relating to temporary rate reductions. The company and the city council had agreed upon a reduction, but the mayor of the city had refused to sign the contract for reasons of which the commission was not informed. The commission ordered the specified rate to go into effect with the statement that the effect of the reduction would not conflict with the other terms of the lease but would relieve the citizens of the city from paying the penalty of tedious legal procedure. *Pennsylvania Public Utility Commission v. Philadelphia Gas Works Co. (Temporary Rate Docket No. 3).*

Unauthorized Transportation for Federal Government

THE Maryland commission sustained a complaint by an interurban electric railroad operating between Baltimore and Annapolis against operators of motor vehicles transporting workmen between Baltimore and the United States Naval Academy at Annapolis. The defendant had a fleet of trucks and busses employed under contract with the United States government in transporting these laborers on regular schedule. The commission said that a permit was required for such transportation.

It was argued by counsel for the defendants that their clients were operating as agents of the United States government. It seemed clear to the commission, however, that the defendants were operating as independent contractors responsible for the safe conduct of their passengers. The trucks were registered in the names of the defendants and were not the property of the government, and the defendants had protected themselves by insurance in the form generally for operators of passenger motor vehicles for hire. The commission, therefore, ordered the defendants to cease such operations, notwithstanding citations of court rulings to the effect that agents of the Federal government are not required to have special state licenses and pay special taxes such as the Maryland law requires of those who operate for hire. *Baltimore & A. Railroad Co. v. Lichtenberg (Case Nos. 4207, 4208).*

Propriety of Assessments for Expense of Investigation

VARIOUS objections interposed by railroad companies to the assessment of expenses incurred in a rate investigation were overruled by the Wisconsin commission. A contention that since the case before the commission was an adversary proceeding, and that accordingly the only investigation made by the commission was to hear the complainants and defendants and to adjudicate their controversy on the evidence produced by them, was called persuasive but not sound. The commission said:

> The direct assessment of expenses is authorized whenever the commission deems that an investigation of the "books, accounts, practices, and activities" or appraisals of the property of a railroad are necessary to enable the commission to perform its duties. It appears to us that the term "practices and activities" includes the assessment and charging of rates and that some investigation of such practices is almost always required in a proceeding in which the reasonableness of important classes of rates is involved. In this regard the distinction is one more of degree than of kind between the instant case and one in which general rate discriminations are charged involving

an investigation, not only of the rates attacked by the complainant, but other rates concurrently charged to other shippers by the defendant, or a general rate investigation where reports of revenues and expenses are submitted and an analysis required in order to adjudicate the issues before the commission. When it becomes necessary to adjudicate the reasonableness of a rate, an issue which involves the various transportation conditions under which such rate is charged and the level of other rates charged by the defendants for comparable service, the call of the statute seems to be sufficiently met.

The use of the term "any railroad" in the statute was held not to preclude application of the statute to several railroads involved as a group. Expenses which could be specifically allocated to the investigation of the public service commission were deemed to be within the purview of the statute authorizing the assessment of "special expenses."

The method of apportionment of the expenses between the railroads was also contested. While the statute lays down no rule whereby when several railroads are under investigation the expenses shall be apportioned as between them, it is obviously wholly impracticable, in fact impossible, said the commission, to allocate directly expenses between the several companies. Expenses, therefore, must be apportioned upon some equitable and practical basis. The commission deemed it proper to levy the assessment in proportion to the respective gross intrastate operating revenues during the last calendar year. *Thunder Lake Lumber Co., et al. v Chicago & North Western Railway Co. et al. (2-R-662).*

Right of Municipality to Prohibit One-man Street Car Operation

A FEDERAL court reversed an injunction decree against the enforcement of an ordinance prohibiting the operation of one-man street cars in the city of San Francisco. The court held that it should not exercise an independent judgment to determine whether or not one-man street cars are or are not as safe as two-man cars, or safer. The court took the position that the burden of proof was upon the company attacking the ordinance to show that the ordinance was invalid and that it must not only overcome the evidence in support of the ordinance, but also any state of facts which might make the question as to the validity of the ordinance debatable.

Neither the fact that the municipality was operating street cars in competition with the street railway company nor the fact that enforcement of the ordinance was burdensome and might lead to bankruptcy of the street railway was considered a sufficient ground for declaring the ordinance unconstitutional. The ordinance, applying to municipally operated street cars, as well as company operated street cars, was held not to deny the company the equal protection of law.

Notwithstanding the fact that one-man street car operation had been approved in various jurisdictions, the court considered the question of comparative safety of one-man and two-man street cars a debatable question which a legislative body would have power to decide. It was pointed out by one of the judges that whether the governing bodies in certain jurisdictions should consider one-man street car operation sufficiently safe for their citizens, the governing bodies of other jurisdictions would have the right to decide that matter for themselves. The particular physical condition of the San Francisco streets and topography were also discussed in this connection.

Each of the three judges of the circuit court of appeals wrote a separate opinion expressing his views on this controversy, but there was majority agreement on all the essential points necessary to repel the attack which was made upon the ordinance. *City and County of San Francisco et al. v. Market Street Railway Co. 98 F. (2d) 628.*

Stockholders Entitled to Stock to Represent Reinvested Earnings

A SMALL telephone company was authorized by the North Carolina commissioner to issue $6,000 in stock to its stockholders from surplus according to their respective stock interest, upon a showing that there had been a steady expansion in the telephone properties and that profits had been used in the enlargement of the plant, which surplus had been accumulated by economical management and small salaries paid the officers instead of having been paid to the stockholders in large dividends.

The company needed additional funds for capital expansion, but it was contended that under present conditions it was difficult, if possible, to persuade the stockholders to provide sufficient capital for what was needed, and owing to the smallness of the exchange and the hazards of storms which might destroy telephone properties it was not practicable to negotiate a loan for the money needed. Present stockholders felt that it was unfair to them that the profits which had been made by close economical management should be reinvested and that they have nothing to show for the savings in the way of stock. It was believed that if a stock dividend were allowed, the present stockholders could be persuaded to put up in cash the necessary amount for needed improvements by buying additional stock. The commissioner said:

> . . . there is justice in the contention of the applicant and its stockholders that there should be some reward for thrift and economy, even in a public utility, and that where money has been frugally saved and reinvested in the plant, when it could have been paid to the stockholders, that the stockholders are entitled to have something to show for their reinvestment.

Re Mooresville Telephone Co. (Docket No. 1403).

Other Important Rulings

THE Federal Communications Commission, in denying authority for a radio broadcast station, declared that it must consider the interests of the listening public rather than those of an individual applicant, and that where facilities of a broadcast station are devoted primarily to one purpose and the station serves as a mouthpiece for a definite organization, it cannot be said or considered then to be serving the general public. *Re Young People's Asso. for the Propagation of the Gospel (Docket No. 4862).*

The Pennsylvania Superior Court upheld an order of the commission allowing a copartnership to use a privately owned sidetrack running from a railroad line and apportioning the cost of the use. The court held that the sidetrack, although privately owned and constructed, was a part of the transportation system and also part of the facilities of the railroad. *Lehigh Navigation Coal Co. v. Pennsylvania Public Utility Commission, 1 A. (2d) 540.*

The Minnesota commission dismissed an application for an extension of telephone service to a summer school within the exchange area boundaries of a company other than the one from which the service was sought. The commission found that the existing company was ready and willing to install and render reliable and adequate service and that authority for the other company to enter the territory would be contrary to the provisions of §5299, Mason's Minnesota Statutes 1927. *Stolee v. Alexandria Telephone Co. (M-2411).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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[Complaint Docket No. 11583.]

Municipal plants, § 13 — Jurisdiction of Commission — Rates — Facilities leased to operating company.

1. Rates of a company operating a municipally owned gas plant under lease from the municipality are subject to the general jurisdiction of the Commission, under a statute defining "facilities" subject to Commission jurisdiction as including property "without limitation" and any and all means used and instrumentalities "in any manner owned, operated, leased" in connection with the business of any public utility, p. 265.

Rates, § 57 — Jurisdiction of Commission — Effect of lease — Municipal gas plant.

2. Rates embodied in a lease agreement between a municipality and a corporation operating the municipality's gas plant may be changed by the Commission, since rate provisions of such a contract may be altered or revised by the legislature or its duly constituted regulatory Commission in the exercise of the police power, p. 267.

[September 27, 1938.]

COMPLAINT *against rates of a public utility corporation operating a municipally owned gas plant; petition to dismiss for lack of jurisdiction dismissed.*

By the COMMISSION: H. Jerome Jaspan, complainant, on February 16, 1938, filed a complaint with the Pennsylvania Public Utility Commission against the rates and charges of The Philadelphia Gas Works Company, the lessee and operator of the gas plant and system owned by the city of Philadelphia. The respondent, on May 2, 1938, filed a petition to dismiss the complaint on the ground that the Commission has no general jurisdiction over it under the provisions of the Public Utility Law.

The complainant filed his answer, denying that the Commission lacked jurisdiction. Oral argument has been heard and briefs filed.

[1] The city of Philadelphia, prior to 1897, owned and operated its own gas works. In that year it entered into a 30-year lease agreement with the United Gas Improvement Company (assignor of present respondent) whereby the latter contracted to operate the gas works of the municipality. In 1919, a complaint against the gas rates was filed with the Public Service

Commission, and by appropriate pleadings the jurisdiction of the Commission over the United Gas Improvement Company was challenged. The Public Service Commission held that it had no jurisdiction under the provisions of the Public Service Company Law of 1913, P. L. 1374.

Upon appeal the superior court affirmed the order of the Commission. Ferguson and McDowell v. Public Service Commission (1923) 82 Pa. Super. Ct. 238.

The 1913 law specifically exempted the facilities of a municipality from the jurisdiction of the Commission and this exemption was held to apply to such facilities when leased to and operated by a public service company. The superior court, on p. 241, of its opinion, *supra,* after reciting the definitions of "Corporation," "Service," and "Facilities," in the 1913 law, pointed out that the property of a municipality was expressly exempt from the definition of "Service." The result of this was that any service rendered by means of facilities owned by a municipality was exempt from the provisions of that law.

In 1933 a complaint was filed with the Public Service Commission against the lessee of the municipal gas works of Philadelphia requesting the Commission, inter alia, to order a reduction in the gas rates. The Commission dismissed the complaint for lack of jurisdiction, relying on the superior court's opinion in Ferguson and McDowell v. Public Service Commission, *supra.* Upon appeal the superior court affirmed the order of the Commission. Wilson v. Public Service Commission (1935) 116 Pa. Super. Ct. 72, 8 P.U.R.(N.S.) 34, 176 Atl. 510. The court reiterated its prior opinion that the terms of the Public Service Company Law of 1913 expressly exempted from the general jurisdiction of the Public Service Commission a public service company operating a municipally owned plant.

On page 80 of its opinion, however, the superior court pointed out that the legislature might sometime in the future pass a statute which would subject the facilities, rates, and service of a city-owned public utility plant to the supervision and regulation of a regulatory body, but up to that time the legislature had not done so.

In 1937 the Public Utility Law was enacted, Act of May 28, 1937, P. L. 1053. The present proceeding turns upon the question of whether or not the Public Utility Law enlarges the Commission's jurisdiction to include jurisdiction over the rates and facilities of a municipally owned plant leased to and operated by a public utility.

In defining the term "Facilities" in § 2, Par. 10, of the Public Utility Law, the legislature has significantly omitted from the definition of facilities the exemption of municipally owned property contained in the Public Service Company Law of 1913. "Facilities" is defined as: ". . . all the plant and equipment of a public utility, including all tangible and intangible real and personal property *without limitation,* and any and all means and instrumentalities *in any manner owned,* operated, leased, . . . in connection with, the business of any public utility. . . ." (66 PS § 1102 [10].)

The reasoning of the court in its prior decisions was based on the exclusion of municipal property from the

definition of "Facilities" but it is clear, from the above, that municipal property is included in the definition of "Facilities" in the present law.

Therefore, no exemption of municipally owned property can be read into the definition of the term "Service" and any service rendered by means of municipal facilities is subject to the general jurisdiction of the Public Utility Commission if furnished by a public utility.

"Public Utility" is defined in § 2, Par. 17, as: ". . . corporations . . . owning or *operating* . . . *facilities* for: Producing . . . artificial gas . . . to or for the public for compensation. . . ." (66 PS § 1102 [17a].)

As The Philadelphia Gas Works Company, respondent, is a corporation as defined in § 2, Par. 9, and as the facilities of a municipally owned plant are not exempt as they were under the 1913 law, it is clear the facilities owned by the city of Philadelphia but operated by the respondent, a public utility, in rendering service to the public, are subject to the general jurisdiction of the Public Utility Commission. It follows that the rates of respondent, furnishing service to the public by means of those facilities, are subject to the general jurisdiction of the Commission.

A careful reading of the Public Utility Law of 1937 indicates the obvious intention of the legislature to include within the jurisdiction of the Public Utility Commission every public utility furnishing public utility service. No provision appears anywhere in the act which would indicate that the general jurisdiction of the Public Utility Commission over a public utility was not to be exercised merely because the facilities by which the utility furnished service was owned by a municipality. It is quite apparent that the only public utility service which is not within the general jurisdiction of the Public Utility Commission is that furnished by the commonwealth or by a municipality operating solely within its territorial limits. Section 202, Par. (g), of the Public Utility Law.

[2] The respondent also contends that the Commission is without jurisdiction because the 1926 lease between the city of Philadelphia and the respondent is still operative, Philadelphia Gas Works Co. v. Philadelphia (1938) — Pa. —, 1 A. (2d) 156, and the Public Utility Commission cannot change the terms of that lease, i. e., the prescribed rates.

That agreement is not determinative of the jurisdiction of the Public Utility Commission over the respondent's rates and service. The jurisdiction of the Commission is determined by the construction of the appropriate statutes of the commonwealth and not upon an agreement between a municipality and a public utility. As indicated above, the present status of the law places the operations of the respondent within the jurisdiction of the Commission. The fact that the Public Service Commission approved the 1926 lease, which placed regulation over the rates and service of respondent in a gas commission appointed as provided by the lease, does not estop the legislature from conferring such jurisdiction to a regulatory Commission.

The rates and service of a public utility are subject to the police power of the commonwealth. Springfield

Consol. Water Co. v. Philadelphia, 285 Pa. 172, P.U.R. 1926C, 321, 131 Atl. 716; Leiper v. Baltimore & P. R. Co. (1918) 262 Pa. 328, P.U.R. 1919C, 397, 105 Atl. 551. Article XVI, § 3, of the Constitution of Pennsylvania provides that:

". . . the exercise of the police power of the state shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe . . . the general well-being of the state."

This section has received judicial interpretation in connection with the constitutional provision dealing with the impairment of obligations and it has uniformly been held that the rate provisions of such a contract may be altered or revised by the legislature or its duly constituted regulatory Commission in the exercise of the police power of the commonwealth.

In Scranton v. Public Service Commission, 268 Pa. 192, P.U.R.1920F, 661, 110 Atl. 775, the city of Scranton, long prior to the creation of the former Public Service Commission had granted a franchise to the Scranton Railway Company for the use of city streets by the railway. One of the terms of the franchise provided that a passenger could ride from one part of the city to other parts of the city for a fare not exceeding 5 cents. After the creation of the Public Service Commission the railway company filed an application for permission to increase the fare. The increase was permitted whereupon the city appealed on the ground that the order of the Public Service Commission violated the obligations of contract provisions of the state and Federal Constitutions. This contention was rejected. On pages 195 and 196 of its opinion (P.U.R. 1920F, at p. 663) the court said:

". . . but a municipality may not annex such terms to its consent as will deprive the commonwealth of its inherent police power to see that a street passenger railway company is not prevented from serving the public by the municipality's enforcement of conditions in a consenting ordinance that have become impossible of performance. What may have been a reasonable rate of fare at the time of the passage of a consenting ordinance may, under changed economical conditions, become confiscatory, and a street passenger railway company may not be able to serve the public on account of insufficient revenues, based upon the fare fixed in the ordinance. When such situation arises, as it has arisen and will arise again, there must be relief somewhere to the public, and it lies in the police power of the state, which is never to be abridged nor bartered away.

"When the city of Scranton gave its consent to the construction of what is now the Scranton Railway, it exercised a constitutional power conferred upon it, but it is conclusively presumed to have known at the time the consenting ordinance was passed that the sovereign police power of the state to modify its terms would be supreme whenever the general well-being of the public so required. In exercising the power given it by § 9 of Art. XVII of the Constitution, the city did so with § 3 of Art. XVI before it, giving it distinct notice that the police power of the commonwealth was, and would be, controlling. With this knowledge on the part of the municipality at the time

it passed the ordinance it is not now to be heard to complain that the state has struck down its contract or agreement with the street passenger railway company. The state has done nothing of the sort, but has merely enforced a condition written by the law into the ordinance at the time of its passage, that it would at all times be subject to the police powers of the commonwealth. That power includes the regulation of charges for services rendered to the public by public service corporations, and the state has exercised it in the passage of the Public Service Company Act, under which the Public Service Commission passes, in the first instance, upon all changes of rates made by public service corporations subject to review by the courts. St. Clair v. Tamaqua & P. Electric R. Co. 259 Pa. 462, P.U.R.1918D, 229, 103 Atl. 287, 5 A.L.R. 20."

In Leiper v. Baltimore & P. R. Co. *supra,* a railroad entered into a contract whereby it agreed to carry stone from a certain quarry at fixed rates. After the creation of the Public Service Commission, the railroad filed a new tariff schedule altering these rates. The owner of the quarry sought to enjoin the collection of the new rates contending that the Commission had no power to change any of the terms of his contract. The court in its opinion, holding that the Commission had such power, stated at p. 332 of 262 Pa. (P.U.R.1919C, at p. 400):

"To permit the contract made between the appellee and appellants to stand as against rates established in a legal and orderly method and in conformity with the provisions of the law would be to nullify the purposes of the act. It would be impossible for the Commission to enforce an equality of reasonable rates, except upon the basis that it is not bound by contracts previously entered into between a public service company, and either a municipality, another corporation, or a private individual. The basis upon which this conclusion must rest is that under the Constitution of Pennsylvania (Art. XVI, § 3) it is provided: '. . . the exercise of the police power of the state shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the state.'

"Where the rights of individuals under a contract which would otherwise be perfectly valid are in conflict with the 'general well-being of the state,' the rights of the individuals must give way to the general welfare. It therefore follows that when, as in this case, the parties enter into a contract with a public service corporation relating to rates, they are presumed to have done so with the knowledge that the right of the state to exercise this police power in the future is expressly reserved, and that where the common weal and the interests of the public demand that the provisions of the contract thus entered into shall be modified, it can be done without any violation of the provision of the Constitution of the United States with reference to the impairment of the obligation of contracts."

To the same effect see Suburban Water Co. v. Oakmont, 268 Pa. 243, P.U.R.1920F, 810, 110 Atl. 778; Bellevue v. Ohio Valley Water Co. (1914) 245 Pa. 114, 91 Atl. 236; Wilkinsburg v. Public Service Com-

mission (1919) 72 Pa. Super. Ct. 423.

It is therefore quite apparent that the rates embodied in the 1926 lease agreement may be changed by the Public Utility Commission under jurisdiction newly conferred upon it by the Public Utility Law of 1937; therefore,

Now, to wit, September 27, 1938, it is *ordered:* That the petition to dismiss the complaint be and is hereby dismissed.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Public Utility Commission

v.

The Philadelphia Gas Works Company

[Temporary Rate Docket No. 3.]

Rates, § 181 — Effect of proposed agreement — Voluntary reduction.

A voluntary agreement on the part of a gas company providing for a lower rate indicates that the reduced rate will provide a fair return and requires the Commission to invoke the broad powers of the Public Utility Law in the public interest to order the rate into effect, although the reduced rate has not gone into effect because the agreement, approved by the company and by the city council, had, for undisclosed reasons, not been signed by the mayor of the municipality.

[September 27, 1938.]

INVESTIGATION *of rates of a gas company operating a municipally owned gas plant; rate reduction in accordance with proposed agreement ordered.*

LIVINGSTON, Commissioner: By order of even date herewith the Commission has held that it has jurisdiction over the rates and charges of The Philadelphia Gas Works Company. H. Jerome Jaspan v. The Philadelphia Gas Works Company, Complaint Docket No. 11583 (25 P.U.R.(N.S.) 265, *ante*).

The Philadelphia Gas Works Company, the operating lessee of the municipal plant owned by the city of Philadelphia, charges for gas service on the basis of a contract entered into in 1926 between The United Gas Improvement Company, assignor of the respondent, The Philadelphia Gas Works Company, and the city of Philadelphia. There has been published by The Philadelphia Gas Works Company a gas service tariff issued September 30, 1932, effective October 1, 1932. This tariff was filed with the Public Service Commission in 1933 for its general in-

formation, with the reservation that the Commission had no jurisdiction over its rates.

The Commission has been informed by The Philadelphia Gas Works Company that the tariff above referred to is the effective tariff today. Schedules of rates pertinent to this issue in that tariff are as follows: Rate GS—General Service, first block, 2,000 cubic feet per month at 90 cents net per thousand cubic feet; Rate CS—Combination Service, first block, 2,000 cubic feet per month at 90 cents net per thousand cubic feet.

The Philadelphia Gas Works Company, under date of September 20, 1938, forwarded to the Commission a copy of a proposed revised agreement between respondent and the city of Philadelphia. The respondent company, through its counsel at oral argument at Complaint Docket No. 11583, *supra,* has given the Commission a complete history of this proposed agreement. The agreement provides for a maximum of 85 cents net per thousand cubic feet. Counsel for The Philadelphia Gas Works Company stated that the reason such tariff is not now in effect is that, although the company and the city council had agreed to a reduction in rates under the new contract, the mayor of the city of Philadelphia had refused to sign the contract for reasons of which we are not informed, as the contract is not before us.

Section 310 (d) of the Public Utility Law (66 PS § 1150d) authorizes the Commission to "(d) Whenever the Commission, upon examination of any annual or other report, or of any papers, records, books, or documents, or of the property of any public utility, shall be of opinion that any rates of such public utility are producing a return in excess of a fair return upon the fair value of the property of such public utility, used and useful in its public service, the Commission may, by order, prescribe for a trial period of at least six months, which trial period may be extended for one additional period of six months, such temporary rates to be observed by such public utility as, in the opinion of the Commission, will produce a fair return upon such fair value, and the rates so prescribed shall become effective upon the date specified in the order of the Commission. Such rates, so prescribed, shall become permanent at the end of such trial period, or extension thereof, unless at any time during such trial period, or extension thereof, the public utility involved shall complain to the Commission that the rates so prescribed are unjust or unreasonable. Upon such complaint, the Commission, after hearing, shall determine the issues involved, and pending final determination the rates so prescribed shall remain in effect."

By admission of counsel and from an examination of the new contract, a reduction in gas rates is obviously due and owing to approximately 500,000 gas consumers in the city of Philadelphia. Such a voluntary agreement on the part of the company indicates that a maximum rate of 85 cents net per thousand cubic feet will give to respondent company a fair return on the fair value of its property used and useful in the public service, and requires the Commission to invoke the broad powers of the Public Utility Law in the public interest. The effect

of such a reduction will not conflict with the other terms of the lease, but will relieve the citizens of Philadelphia from paying the penalty of tedious legal procedure; therefore,

Now, to wit, September 27, 1938, it is *ordered:* That The Philadelphia Gas Works Company, respondent, file a tariff on or before October 10, 1938, effective on one day's notice to the public and this Commission, effecting a maximum charge of 85 cents net per thousand cubic feet in its gas rates in Rate GS—General Service and Rate CS—Combination Service.

Buchanan, Beamish, and Colegrove, Commissioners, concur.

SECURITIES AND EXCHANGE COMMISSION

Re Northeastern Water & Electric Corporation

[File No. 46-96.]

Corporations, § 7.1 — Duties of Federal Commission — Fees or commissions of directors.

1. The Securities and Exchange Commission has the duty to scrutinize with the greatest care any fees or commissions to be paid to directors by companies subject to its jurisdiction, p. 282.

Consolidation, merger, and sale, § 47.1 — Remuneration in connection with acquisition.

2. The provisions of Public Utility Holding Company Act of 1935, § 10 (b)(2), make mandatory scrutiny of fees, commissions, or other remuneration paid in connection with an acquisition, p. 282.

Corporations, § 16 — Duties of director — Personal profits.

3. A director's duty to his company rises higher than personal profit, he owes it an obligation to perform services with a view to its rather than his welfare, and he owes it an obligation to deal with it with absolute candor; the director must be prepared to demonstrate that any charges which he makes for extraordinary services are exactly reasonable, p. 282.

[August 31, 1938.]

APPLICATION *by a registered holding company pursuant to § 10 (a) (1) of the Public Utility Holding Company Act of 1935 to purchase common stock of a water utility company; acquisition authorized subject to conditions as to payment of fees, commissions, or other remuneration.*

By the COMMISSION: Northeastern Water and Electric Corporation, a registered holding company, has filed an application pursuant to § 10 (a) (1)

of the Public Utility Holding Company Act of 1935 to purchase 9,600 shares of common stock of Hazleton Water Company, being the entire capital stock of that company, from Lehigh Valley Railroad Company, the present owner of that stock. The consideration, namely $600,000, will be paid in cash and no financing is contemplated.

A hearing on this application, as amended, was held before a trial examiner after appropriate notice. After it had received Commission counsel's proposals for findings of fact, the applicant waived the making of a trial examiner's report, the right to submit proposed finding of fact, and the right to file a brief or to have oral argument before the Commission. After examination of the record in this matter, the Commission makes the following findings:

I

Hazleton Water Company (hereinafter called Hazleton) is an operating water company owning and operating a waterworks in the city of Hazleton, Pennsylvania, and adjacent areas. The company owns and operates facilities of water supply and distribution. It carried these on its books at $2,322,528 (at February 28, 1938) which is represented to be the cost or less. As of the same date, the reserve for depreciation amounted to $763,440.

In addition to the 9,600 shares of common stock covered by this application, Hazleton has outstanding $1,000,000 principal amount of 4½ per cent first mortgage bonds, also owned by Lehigh until June, 1938.

II

Northeastern Water and Electric Corporation (hereinafter called the applicant) has six active and two inactive subsidiary companies which are electric utilities. These are located in the states of Maine, Ohio, and Indiana. It also has thirty-nine subsidiary companies which are water companies. These are located in the states of Arkansas, Connecticut, Illinois, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, Ohio, Pennsylvania, and West Virginia. It also has one subsidiary company which furnishes natural gas at wholesale in the state of West Virginia. The following table shows the approximate percentages of the system's gross revenues and net income which are derived from the respective businesses:

	% of Total	
Services	Gross Revenues	Net Income
Water	63.0	68.6
Electric	32.1	27.7
Other	4.9	3.7
Total	100.0	100.0

III

The immediate parent of the applicant is Northeastern Water Companies, Inc. This company is in turn controlled by Associated Gas and Electric Company. The transactions by which the Associated Gas and Electric caused Northeastern Water Companies, Inc., to be organized and by which it obtained control of the applicant will be briefly summarized.

a. Northeastern Water Companies, Inc., was organized on June 7, 1937, by employees of a firm of lawyers who represent the Associated Gas and Electric Corporation. It was a straw corporation, its capital originally consisting of $1,000 which was advanced by the law firm.

b. Using this straw corporation, the Associated interests caused funds and securities to be transferred among a number of companies under common control with Associated. The result of these complicated financial transactions was that the straw corporation (Northeastern Water Companies, Inc.) was put in a position to acquire 88.22 per cent of the common stock of the applicant from its then owner (alleged to be a nonaffiliated Canadian corporation). The consideration to be paid was $3,200,000.

c. The straw corporation (Northeastern Water Companies, Inc.) paid this consideration to the extent of $1,000,000 in securities and $100,000 in cash, and by means of a note for $2,100,000. To secure this note it pledged the common stock of the applicant.

d. The straw corporation (Northeastern Water Companies, Inc.) obtained the $1,000,000 in securities and the $100,000 in cash from New England Gas & Electric Association in return for demand notes. New England Gas & Electric Association in turn had obtained the $1,000,000 in securities from Associated Utilities Corporation, a subsidiary of Associated Gas and Electric Corporation, in return for its own demand note which it subsequently liquidated by turning over to Associated Utilities Corporation the demand note of Northeastern Water Companies, Inc., which it had received in exchange for the $1,000,000 in securities. The apparent willingness of New England Gas & Electric Association to make the $100,000 cash advance to a corporate shell is perhaps explained by the fact that this company and Associated Gas and Electric Company were at all times mentioned under common control. Both were controlled by certain trustees under a declaration of trust dated June 1, 1924.

e. On December 21, 1937, Associated Gas and Electric Corporation acquired from the employees of its lawyers the stock of the straw corporation (Northeastern Water Companies, Inc.) by repaying to them the $1,000 which they had advanced upon the organization of that company.

f. Northeastern Water Companies, Inc., has recently filed a voluntary petition for reorganization under § 77B of the Bankruptcy Act. This was apparently made necessary by its inability to meet the note for $2,100,000 given to the seller of the applicant's stock.

g. The net result of these transactions was that the Associated Gas and Electric System acquired the applicant's common stock. The consideration for this stock has been only partly paid; and the purchaser of the stock (Northeastern Water Companies, Inc.) has now instituted 77B proceedings. Even the part of the consideration that was paid in cash to the seller of the stock was obtained in the form of a loan which in substance came from the New England Gas & Electric Association, a company under common control with Associated Gas and Electric Company.

IV

Section 10 (b) (1) of the act provides that the Commission shall approve the acquisition unless it finds that such acquisition will tend toward interlocking relations or the concentration of control of public utility com-

panies, of a kind or to an extent detrimental to the public interest or the interest of investors or consumers.

Section 10 (b) (3) of the act provides that the Commission shall approve the acquisition unless it finds that such acquisition will unduly complicate the capital structure of the holding company system of the applicant or will be detrimental to the public interest or the interest of investors or consumers or the proper functioning of such holding company system.

Section 10 (c) (1) of the act provides that the Commission shall not approve an acquisition of securities which is detrimental to the carrying out of the provisions of § 11. Section 11 of the act looks to the eventual limitation of any holding company system to a single integrated public utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public utility systems.

We have examined in detail the effect of these statutory provisions upon the proposed transaction. The following findings will suffice to deal with them:

a. Hazleton owns and operates a waterworks system in the city of Hazleton, in the northeastern part of Pennsylvania, and surrounding territory.

b. Of the thirty-nine water company subsidiaries of the applicant, nine are located and operated in Pennsylvania.

c. Associated Gas and Electric Company represents that it has sixty-one subsidiary companies which are public utility companies, chiefly electric utilities, which operate in the states of:

Arizona	New Jersey
Arkansas	New Mexico
Connecticut	New York
Delaware	North Carolina
Florida	Ohio
Georgia	Oklahoma
Illinois	Pennsylvania
Indiana	South Carolina
Kentucky	South Dakota
Louisiana	Tennessee
Maine	West Virginia
Maryland	Virginia
Missouri	

The electric utility properties of the applicant's holding company system and many of the electric utility properties of the Associated Gas and Electric Company holding company system are not interconnected and prima facie are not capable of interconnection.

d. It is obvious that serious questions are presented under the above provisions of the act if it is to be assumed that applicant and its proposed subsidiary company, Hazleton, are to remain members of the far-flung Associated Gas and Electric Company holding company system. For the purpose of this application, we do not indulge in any such assumption. Our inquiry for present purposes is directed to whether or not the applicant's acquisition for cash of the equity securities of Hazleton, a water company, will violate any of the above statutory standards.

In our opinion, if the proposed acquisition is immediately beneficial to Northeastern Water and Electric Corporation, it will also be beneficial to whatever interest ultimately owns that company. In view of the assurance

of applicant and its president that it will within a reasonable time dispose of its electric utility subsidiary companies and thus cease to be a holding company as defined by the act, and in view of the fact that in any event we must ultimately deal with the larger system under § 11 of the act, we do not find it necessary to make any adverse finding under §§ 10 (b) (1), 10 (b) (3), and 10 (c) (1) merely on account of applicant's connection with Associated Gas and Electric Company. It should be noted, however, that, if the present proposal were to acquire electric or gas utility securities or assets, the situation would be different, since by virtue of § 10 (c) (2) we would be obliged, before approving the acquisition, to find that such acquisition would serve the public interest by tending toward the economical and efficient development of an integrated public utility system.

Adverse findings under §§ 10 (b) (1), 10 (b) (3), and 10 (c) (1) are, in view of the record, not appropriate. Accordingly, we do not make such findings.

V

Section 10 (f) of the act provides that the Commission shall not approve any acquisition unless it appears to the satisfaction of the Commission that such state laws as may apply in respect to the acquisition have been complied with, unless compliance with such state laws will be detrimental to the carrying out of the provisions of § 11. Counsel for the applicant has filed an opinion in connection with the application to the effect that all state laws applicable to the proposed acquisition have been complied with.

No state Commission or state securities commission has informed this Commission to the contrary. Therefore, it appears to the satisfaction of the Commission that the provisions of § 10 (f) of the act have been complied with.

VI

Section 10 (b) (2) of the act provides that the Commission shall approve the acquisition of securities unless it finds that the consideration, including all fees, commissions, and other remuneration, to whomsoever paid, to be given directly or indirectly in connection with such acquisition is not reasonable or does not bear a fair relation to the sums invested in or the earning capacity of the utility assets underlying the securities to be acquired.

(A) According to the present application (and subject to certain comments which we shall hereinafter make), the applicant proposes to pay to the vendor (the Lehigh Valley Railroad Company) $500,000 for the common stock of Hazleton. As we have already stated, in addition to these 9,600 shares of common, Hazleton has outstanding $1,000,000 principal amount of 4½ per cent first mortgage bonds, also held by Lehigh until June, 1938.

For the twelve months ended February 28, 1938, the gross revenues of Hazleton amounted to $363,328. After giving effect to the interest requirements of the $1,000,000 principal amount of first mortgage 4½ per cent bonds now outstanding, the earnings available for the common stock which applicant proposes to acquire amounted to $103,230.

The book value of the common stock of Hazleton Water Company to be acquired, at February 28, 1938, was $614,557, as follows:

Stated value	$480,000
Capital surplus, arising from transfer from corporate surplus ($101,026) and from other surplus reserves ($19,500)	120,526
Earned surplus	14,031
Book value of common stock, per the issuer	$614,557

Taking these facts alone, it follows that no finding would be warranted that the $500,000 is not a reasonable consideration for this property under the statutory provision. This, however, is not the whole story. Section 10 (b) (2) of the act does not permit this Commission to approve an acquisition merely upon the basis of the consideration paid to the vendor. We must go further and examine the reasonableness of all "fees, commissions, and other remuneration, to whomsoever paid, to be given, directly or indirectly, in connection with such acquisition."

(B) The present application seeks the Commission's approval of a fee, purported to be in the amount of $25,000, to be paid to W. C. Langley & Co. for services rendered in connection with the proposed purchase. It is necessary to relate the pertinent facts in some detail in order to show the true nature of the services rendered and of the fee proposed to be paid.

1. It appears from the record that W. C. Langley & Co. is a partnership engaged in the business of investment banking and general security transactions. W. C. Langley, a member of that partnership, served as a director of the applicant from August 13, 1934, to March 28, 1938, at which time he resigned. In other words, Langley was a director of the applicant during the negotiation and consummation of a contract of sale and purchase described above and for a short time thereafter. Lehigh's desire to sell its interest in Hazleton had first been brought to Langley's attention by a broker in November, 1936. Until December, 1937, Langley apparently made no progress in arranging for the sale of Lehigh's interest. In November, 1937, another broker had approached Langley, with respect to Lehigh's desire to sell its Hazleton interests. Langley then brought the matter to the attention of American Water Works and Electric Company, which did not purchase. Langley has a substantial interest in the voting stock of that company.

In December, 1937, Langley discussed the matter with three directors of the applicant. Langley was at this time himself a director of the applicant.

On this aspect of the matter, it is important to note that Langley did not find the property and was not acting for the applicant in looking for property such as Hazleton.

2. At the outset, Langley was attempting to sell both the $1,000,000 principal amount of Hazleton bonds and the Hazleton common, all of which were owned by Lehigh. The price was originally set at $1,750,000. Langley's early discussions with his fellow directors of Northeastern were on this basis. This price was subsequently reduced by Lehigh in discussions with Langley. On December 29, 1937, the price had been reduced to $1,550,000.

The matter was first discussed at a

meeting of the applicant's board on January 5, 1938. At this time, applicant's board consisted of nine members. In addition to Langley, another member of the board, J. L. Simpson, was an interested person. Simpson is a director of the investment banking firm of Schroder, Rockefeller & Co., Inc. This firm and W. C. Langley & Co. had an agreement to divide equally commissions arising out of any financing or sale of securities by the applicant. Langley testified that he himself had a verbal understanding with the applicant that he was entitled to any of its financing; and since Schroder, Rockefeller & Co. were friends of the owners of Northeastern, he had agreed to divide its financing on a 50–50 basis.

At the directors' meeting of January 5, 1938, the possibility of purchasing the Hazleton bonds and stock was disclosed to the board. Langley was present at this meeting. The price was stated to be "approximately $1,600,000," the price agreed upon between Langley and Lehigh being $1,550,000 as stated above. However, the record does not clearly show that the report to the board that the price was "approximately $1,600,000" and the failure to report the precise figure of $1,550,000 for which the property could be bought were for the purpose of passing on $50,000 to W. C. Langley or to W. C. Langley & Co. However that may be it is relevant to note that there was an important nondisclosure, for at the meeting of the board no statement was made to the board that W. C. Langley or W. C. Langley & Co. claimed a fee for its services as hereinafter discussed. At this meeting a committee of the board was appointed to conduct the negotiations. Langley voted for the appointment of the committee. He was not a member of it, although he participated in its subsequent negotiations.

Representatives of the applicant investigated the property; and as a result of such investigation and of negotiations with Lehigh, the price for the Hazleton bonds and stock owned by Lehigh was further reduced to $1,500,000. Thereafter, on February 16, 1938, applicant's board voted to purchase the Hazleton bonds and stock for this price. Langley was not present at this meeting, but Simpson (of Schroder, Rockefeller & Co., Inc.) was present and voted for the purchase, although his vote was not necessary to carry the resolution. A few days later, on February 21, 1938, applicant's board voted to pay W. C. Langley & Co. a commission of $75,000 contingent upon the consummation of the purchase. This is more fully discussed hereinafter. On February 28, 1938, applicant entered into a written contract with Lehigh to purchase or cause to be purchased the Hazleton bonds and stock for $1,500,000.

In the early discussions, it was understood by three of the directors of the applicant and W. C. Langley that W. C. Langley expected a fee. It was suggested to Lehigh that the fee be paid by the vendor. However, Lehigh refused to enter into this arrangement. After being informed of the refusal of Lehigh, the three directors agreed to pay a commission to W. C. Langley. Thereafter on December 29, 1937, a tentative agreement was reached between W. C. Langley and Lehigh for the sale of the Hazleton securities at

$1,550,000 as above stated. Shortly thereafter a proposed contract was drafted by representatives of the applicant, such contract providing for a purchase price of $1,627,500. The purpose and intent of this agreement was to have the directors of Northeastern purchase the property at a figure which would permit Lehigh to realize the price required by it and pass the surplus ($77,500) on to Langley. However, Lehigh refused to enter into any such arrangement.

We conclude from the above that Langley did not conduct himself toward his board of directors in this transaction in a manner compatible with a director's duty to his corporation. He was present at a meeting of the board when a purchase price for the Hazleton bonds and stock was reported as approximately $1,600,000 (the price agreed upon between Langley and Lehigh at the time being $1,550,000) without making any disclosure of his intention of claiming a fee. That nondisclosure is heightened by reason of an apparently studied attempt to conceal the fee by having Lehigh pay it out of an increased purchase price. Thus without disclosure to applicant's board, an attempt was made to cause the seller to add a fee for W. C. Langley & Co. to the purchase price to be charged the applicant. A director of Schroder, Rockefeller & Co., Inc., who is also a director of the applicant, voted for the purchase of the Hazleton bonds and stock by the applicant, even though it was understood and contemplated that Schroder, Rockefeller & Co., Inc. would have an interest in the financing which would probably result from the acquisition.

3. The applicant was never interested in retaining the Hazleton bonds; it was only interested in the Hazleton stock. At the same time, Lehigh was anxious to sell the bonds as soon as possible. Consequently, on May 4, 1938, Lehigh agreed to release the applicant from its obligation under the contract of February 28, 1938, to take or dispose of the bonds. On the same day, Lehigh entered into a contract with W. C. Langley & Co. and Schroder, Rockefeller & Co., Inc., whereby the named firms were to find a purchaser for the Hazleton bonds. W. C. Langley & Co. and Schroder, Rockefeller & Co., Inc., were to receive a commission of $20,000 from Lehigh to be divided equally between them. It was further agreed that, if W. C. Langley & Co. received $75,000 from the applicant W. C. Langley & Co. would not be paid by Lehigh a $10,000 share of the commission for selling the bonds. It was also agreed between Lehigh and the applicant that the applicant would assume payment of, or reimburse Lehigh for any commission paid in connection with, the sale of the bonds, to a maximum of $20,000.

Subsequently, the bonds were sold to certain insurance companies; Schroder, Rockefeller & Co., Inc.'s services in connection with the sale of the bonds were inconsequential. In effect the commission was paid to W. C. Langley & Co. who divided it with that firm. Applicant's remaining commitment was to buy the Hazleton stock for $500,000.

From the above facts, it is clear that the applicant, and not Lehigh, was to pay the agreed commission to W. C. Langley & Co. and associate for selling the bonds. These facts were not disclosed to this Commission until July,

1938, although the present application was pending before us after April 8, 1938.

4. Sometimes after May 4, 1938, the staff of the Commission indicated to representatives of the applicant that it would not recommend that the Commission approve the proposed fee of $75,000, which the applicant's board had voted to pay W. C. Langley & Co., as heretofore stated. This amount would constitute not 5 per cent, but 15 per cent, of the agreed purchase price of the Hazleton common stock, namely $500,000.

Thereafter, on July 13, 1938, applicant amended its application so as apparently to reduce the proposed fee to W. C. Langley & Co. to $25,000. The arrangement of May 4th relating to the $20,000 commission allegedly for services in selling the bonds, was disclosed in this amendment. This commission, as stated above, would have brought the total fees to be paid, directly and indirectly, by the applicant to $45,000.

The amendment of July 13, 1938, however, recited that on July 11, 1938, the agreements of May 4th had been modified so as to relieve the applicant from its commitment to reimburse Lehigh for the $20,000 commission on the bonds to be paid to W. C. Langley & Co. and its associate. This would have reduced the total fee to be paid by applicant to $25,000 or 5 per cent of the price of the Hazleton common. We find, however, that this purported modification was merely a matter of form; in substance and effect, applicant still proposed to pass approximately $20,000 to Lehigh; and Lehigh was to pay $20,000 to W. C. Langley & Co. and its associate. This was to be accomplished by an elaborate device which we summarize below.

On July 11, 1938, at the same time that Lehigh ostensibly relieved the applicant of its obligation to pay the $20,000 commission, the contract of purchase and sale between Lehigh and the applicant was modified in the following manner:

a. Under the Feburary 28, 1938, contract, it was agreed that, at the date of closing, the cash and receivables of Hazleton Water Company would exceed its current liabilities (including accrued taxes) by the sum of $50,000. The purchase price was to be increased or decreased, as the case might be, by the amount by which said excess was greater or less than $50,000. This contract was executed by the parties without objection by either party as to the terms of this provision.

b. It was testified that shortly after the first of March, 1938, a dispute arose between the contracting parties as to whether or not "materials and supplies" were included in the named item. The matter had been called to the attention of the applicant by Lehigh Valley Railroad Company and, according to the testimony of applicant's president, Lehigh Valley Railroad Company contended that materials and supplies on hand should be included in "receivables." According to the testimony of C. E. Hildum, executive vice president of Lehigh Valley Railroad Company, he had not appreciated the significance of the fact that materials and supplies were omitted. He had understood the contract to state that current assets should exceed current liabilities and accrued taxes by the amount stated, although when the matter later came to his attention he

realized that no mention of current assets was made. On the other hand, applicant's president stated that "As the contract was drawn, and in the operation of water companies . . . it did not include materials and supplies."

No agreement was reached (so it was testified) as to the disputed point until July 11th, or a few days before that date. At that time it was agreed that, in computing the "cash and receivables" of Hazleton, materials and supplies on hand might be included.

c. At all times relevant hereto, the amount of materials and supplies on hand was approximately $20,000.

d. It is important to note the following facts:

(1) The contract referred to "cash and receivables." It is significant that at no time prior to July 13, 1938 (neither in the original application filed on April 8, 1938, nor at the time of the hearings on this matter, nor in any of the amendments to the application), was it called to this Commission's attention that a controversy existed as to the meaning of this phrase, or that the phrase should be expanded beyond its usual meaning to include materials and supplies on hand:

(2) The settlement of this alleged disputed point coincided with an effort by applicant to make it appear that the aggregate fee which it was to pay was only $25,000, or 5 per cent of the purchase price. It occurred after the Commission's staff indicated that it would not recommend approval of a 5 per cent fee based on the price of both bonds and stock, or $75,000; and simultaneously with an agreement by Lehigh ostensibly relieving the applicant of the necessity to reimburse Lehigh for the $20,000 commission to W. C. Langley & Co. and its associate.

We conclude that the purpose and effect of the amendment of the contract to include materials and supplies in the amount to be balanced against current liabilities was, so far as the applicant is concerned, to charge the applicant with approximately $20,000 which was to be passed on by Lehigh to W. C. Langley & Co. and its associate. The applicant proposes to pay, in connection with the acquisition of the Hazleton common stock, total fees, commissions, and other remuneration, "directly or indirectly," aggregating approximately $45,000. Of this sum, approximately $20,000 is to be paid to W. C. Langley & Co. and associate through Lehigh, in the manner discussed above; and $25,000 is to be paid directly to W. C. Langley & Co. as a fee in connection with the purchase of the common stock.

5. Langley testified that he kept no memorandum of the time spent on the negotiations, but estimated that it amounted to approximately one-third of his time over a period of ninety days. He further testified that two of his partners, namely, Willard A. Lynch and Edward de Rivera, likewise spent considerable time on the negotiations, although not as much as the time spent by himself. The record does not show any segregation of the time spent in respect of selling the bonds and the stock. Indeed, it appears that any allocation of Langley's time and services separately to the bond and stock transactions is impossible.

Langley also testified that there is no customary broker's fee for services in connection with an acquisition such as is proposed here.

Most of the evidence adduced in support of the claimed fee was predicated on the theory that it amounted to 5 per cent of the proposed purchase price. There was no substantial evidence that a fee in excess of that—or a fee of 9 per cent which applicant is to pay in this instance—is a reasonable fee for applicant to pay.

Conclusions

[1, 2] It is our duty to scrutinize with the greatest care any fees or commissions to be paid to directors by companies subject to our jurisdiction. The provisions of § 10 (b) (2) make mandatory scrutiny of fees, commissions, or other remuneration paid in connection with an acquisition. In addition, other provisions of the act enjoin upon this Commission special vigilance when dealing with fees or commissions to directors or other affiliates. One of the practices which led to the enactment of the act was the taking of exorbitant fees and remuneration by affiliates from public utility holding and operating companies. Section 1 (b) of the act expressly recognizes this. It recites the injury to investors and consumers wrought by "transactions in which evils result from an absence of arm's-length bargaining." Other provisions of the statute, such as §§ 12 (f) and 13 (f), also manifest the concern of Congress with transactions between public utilities and their affiliates, including directors.

[3] It is clear, as a matter of law and justice, that a director's duty to his company rises higher than personal profit. He owes it an obligation to perform services with a view to its rather than his welfare,[1] and, above all, he owes it an obligation to deal with it with absolute candor.[2] His dealings with his corporation are not at arm's length.[3] They must withstand minute scrutiny;[4] and at the very least, the director must be prepared to demonstrate that any charges which he makes for extraordinary

[1] "Absolute and most scrupulous good faith is the very essence of a director's obligation to his corporation. The first principal duty arising from his official relation is to act in all things of trust wholly for the benefit of his corporation." Schemmel v. Hill (1930) 91 Ind. App. 373, 386, 169 N. E. 678, 683.

"They (directors) are subject to the general rule in regard to trusts and trustees, that they cannot, in their dealings with the business or property of the trust, use their relation to it for their own personal gain. It is their duty to administer the corporate affairs for the common benefit of all the stockholders and exercise their best care, skill, and judgment in the management of the corporate business solely in the interest of the corporation." Dixmoor Golf Club v. Evans (1927) 325 Ill. 612, 616, 156 N. E. 785.

[2] In Deford v. Ballentine Realty Corp. (1935) 164 Va. 436, 449, 180 S. E. 164, 169, the court referred to Spellman on Corporations with approval saying: "Spellman on Corporations states that a director acting for himself in a transaction with other disinterested officers acting for the corporation has fulfilled his duty when he discloses to such officers (1) that he is acting in his own behalf, (2) that he has disclosed all the surrounding circumstances, or given an opportunity for full investigation, (3) that he has withheld no information requested by any director or stockholder."

[3] "It is settled that because of the relationship existing between an officer and a corporation, the officer cannot deal with the corporation at arm's length, even though the other directors are acting for it. Such officer cannot deal with the corporation as a stranger, because the position of confidence which he holds enables him to acquire an intimate knowledge of the affairs of the corporation and to influence those associated with him in its management." Deford v. Ballentine Realty Corp. *supra*, at p. 448 of 164 Va.

[4] "While contracts between agents of the corporation occupying positions of trust and confidence and a corporation, fairly entered into and honestly executed, where no one is defrauded or overreached, are not necessarily invalid, such contracts will always be scrutinized with jealous care by courts to see that no advantage is taken of the corporation, or the rights and interests of its stockholders jeopardized." Old Mortgage & Finance Co. v. Pasadena Land Co. (1928) 241 Mich. 426 (syl. 1), 216 N. W. 922, 925.

services are exactly reasonable.[5] No lesser standard is to be implied under our act than prevails at equity.

The test of reasonableness is not met in this case, especially in light of the fiduciary relationship of Langley to the applicant.[6] On the basis of the record in the present case, we cannot conclude that the claimed services rendered by Langley and W. C. Langley & Co. are worth the fees proposed to be paid, directly or indirectly by the applicant in connection with the proposed acquisition. Rather, we find that the total fees, commissions, and other remuneration proposed to be paid, directly or indirectly, by the applicant in connection with the proposed acquisition (aggregating approximately $45,000 or 9 per cent of the purchase price) are not reasonable.

We do not find that the proposed modification of the contract between the applicant and Lehigh in accordance with agreement of July 11, 1938, will constitute payment by the applicant of an unreasonable fee or commission, provided that no other fees, commissions, or remuneration are paid or given directly or indirectly in connection with the proposed acquisition to Langley, W. C. Langley & Co., or to Schroder, Rockefeller & Co., Inc. It it true that this indirect payment would constitute about 2 per cent of the principal of such bonds ($1,000,000). But our conclusion is based upon the facts that W. C. Langley & Co. did accomplish the sale of the Hazleton bonds owned by Lehigh to certain insurance companies, which bonds Northeastern had been obligated to purchase or cause to be purchased; and that the sum of approximately $20,000 to be paid indirectly by Northeastern to W. C. Langley & Co. (by means of the agreement of July 11, 1938) may be considered as a payment for services rendered not only in connection with the sale of the bonds, but also in return for the services of W. C. Langley & Co. generally in this transaction. Taking into consideration, therefore, all of the activity of W. C. Langley & Co. in connection with this transaction, we do not find that such indirect payment is unreasonable. We do find that the payment of an additional fee of $25,000 is unreasonable.

We do not find that the consideration of $500,000, proposed to be paid by the applicant in connection with the acquisition of the Hazleton common stock, including the fees or commissions to be paid indirectly in accordance with the agreement of July 11, 1938, is unreasonable. On the contrary, we conclude that the acquisition on this basis, and without the payment of any other fees, commissions, or oth-

[5] In the case of Bromschwig v. Carthage Marble & White Lime Co. (1933) 334 Mo. 319, 324, 66 S. W. (2d) 889, 892, the court said (quoting from Coombs v. Barker [1905] 31 Mont. 526, 79 Pac. 1 with approval): ". . . under the most favorable view of the authorities, where it appears that the directors have obtained any profit from dealing with the corporation, and the transaction is drawn in question as between them and the stockholders of the corporation, the burden is upon the directors to show that such transaction has been fair, open, and in the utmost good faith."

[6] The courts have long emphasized the strict fiduciary obligations of directors to the corporations they serve. See Twin-Lick Oil Co. v. Marbury (1876) 91 U. S. 587, 588, 23 L. ed. 328, where the court said:

"That a director of a joint stock corporation occupies one of those fiduciary relations where his dealings with the subject matter of his trust or agency, and with the beneficiary or party whose interest is confided to his care, is viewed with jealousy by the courts, and may be set aside on slight grounds, is a doctrine founded on the soundest morality, and which has received the clearest recognition in this court and in others."

er remuneration to Langley, W. C. Langley & Co. (specifically, the $25,000 claimed commission) or Schroder, Rockefeller & Co., Inc., directly or indirectly, in all respects complies with the standards of the act.

Accounting Treatment

On February 28, 1938, applicant entered into a contract with the Chemical Bank and Trust Company, under which the bank agreed to lend to applicant the sum of $1,500,000 if both the bonds and stock of Hazleton Water Company were purchased; or, the sum of $500,000 if only the stock were purchased by the applicant. As a commitment commission for the making of this loan, applicant agreed to pay, and did pay, to the bank, upon execution of this contract, the sum of $7,500.

It appears from the application that the applicant proposes to include this $7,500 payment in the cost of the Hazleton stock to be purchased by debiting it to Account No. 100—Investment Securities and Advances. It is the contention of counsel for the Commission that our Uniform System of Accounts for Public Utility Holding Companies requires that the $7,500 payment be debited to Account No. 257—Other Deductions from Income, and not be included in the cost of the securities by a debit to Account No. 100 in the fashion proposed by applicant. However, applicant has had no opportunity to meet this contention which has not previously been raised, and we will not, therefore, pass upon such accounting treatment at this time but will reserve jurisdiction to do so at some future time.

An appropriate order will issue.

ORDER

Northeastern Water and Electric Corporation, a subsidiary of Associated Gas and Electric Company, Associated Gas and Electric Corporation, and of Northeastern Water Companies, Inc., registered holding companies, having filed an application with this Commission, pursuant to § 10 (a) (1) of the Public Utility Holding Company Act of 1935, for the acquisition of 9,600 shares of common stock of Hazleton Water Company; hearings thereon having been held after appropriate notice; the record in this matter having been duly considered; and the Commission having filed its findings therein;

It is *ordered,* that the acquisition by applicant of such securities for $500,000 to be paid in cash to the vendor and the payment of $25,000 to W. C. Langley & Co., as a commission in connection therewith be, and the same hereby is disapproved; however

It is *ordered* that the acquisition by applicant of such securities for $500,000 to be paid in cash and in accordance with the terms and conditions and for the purposes represented by said application as amended, be, and the same hereby is, approved: Provided that no fees, commissions, or other remuneration to W. C. Langley, W. C. Langley & Co., or to Schroder, Rockefeller & Co., Inc., be paid by the applicant directly or indirectly in connection with this matter other than the fees or commissions to be paid indirectly in accordance with the agreement of July 11, 1938; except that the Commission reserves jurisdiction over the accounting treatment of the $7,500 paid by the applicant to Chemical Bank & Trust Company as a stand-by

charge for a contemplated loan which was never consummated.

It is *further ordered* that, within ten days after recording upon its books the cost of such acquisition, including all fees, commissions, or other remuneration, to whomsoever paid, directly or indirectly, in connection with such acquisition, applicant submit a statement showing the accounting entries to record the transaction and the costs incident thereto.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Public Utility Commission

v.

Marion Heights Water Company

[Complaint Docket No. 11075.]

Valuation, § 102 — Accrued depreciation — Sinking-fund method.

1. A determination of accrued depreciation by use of the 4 per cent sinking-fund method was approved, p. 288.

Depreciation, § 32 — Annual allowance — Sinking-fund method.

2. A determination of annual depreciation by use of the 4 per cent sinking-fund method was approved, p. 288.

Expenses, § 39 — Water purchased for resale.

3. An allowance for the cost of water purchased for resale equivalent to the cost during the last period of record properly protects the utility company for this fluctuating operating expense, since in a properly maintained and metered water supply system, excluding extraordinary circumstances, the relation of increased costs of water purchased for resale will be met by increased revenues derived from sale, p. 289.

Expenses, § 71 — Maintenance cost — Abnormal expenses.

4. Charges for maintenance of a water distribution system are not indicative of a normal or proper allowance for this item when largely brought about by reported consumer sabotage, meter tampering, and meter freezing following the initiation of metered service, p. 289.

Expenses, § 95 — Salaries — Increase after metering.

5. Economies resulting from the installation of metered service should not be dissipated in the creation of unwarranted additional employment or increased salaries to existing officers or personnel without a corresponding need, p. 290.

Expenses, § 63 — Legal expense — Annual retainer.

6. Legal expense in the form of an annual retainer was disallowed and a specific allowance was made for legal expense, p. 291.

Return, § 115 — Water utility — Reproduction cost basis.

7. Return allowance of a water utility was computed at 6 per cent on depreciated reproduction cost new, p. 293.

Rates, § 619 — Fire protection charge — Basis for estimates.

8. An estimate of a proper fire protection charge is arbitrary and not proper or equitable when it is based upon an assumption that a former charge for fire protection service was equitable and that no portion of improvements of distribution system could be assigned to domestic service requirements, it appearing that with the exception of fire hydrants all other portions of the construction have not only improved fire protection service but also domestic service, p. 294.

Rates, § 619 — Fire protection charges — Excess plant method.

9. Use of the excess plant method for determining fire protection charges, which method involves the creation of a hypothetical system capable of rendering domestic water service exclusively and a determination of the difference between the reproduction cost of such system and the entire system, should be restricted; among other objections it arbitrarily assumes certain classes of water service to be of primary importance regardless of the historical development of the utility or its use characteristics, and the application of this principle tends to prejudice other classes of water service where those classes of service are incidental to fire protection service, p. 294.

Rates, § 619 — Fire protection service — Determination of charge.

10. A fire protection charge of a water utility was based upon a cost analysis by which property and operating expenses were segregated directly or by reasonable proportion into two classifications—fire protection service and all other water service, p. 295.

Apportionment, § 63 — Water utility — Fire protection service.

11. An allocation of fixed capital of a water utility between fire protection service and other service was made by allocating such facilities as small distribution mains, service connections, meters, tools, equipment, and furniture entirely to other service and allocation of such facilities as hydrants directly to fire protection service, while larger mains used for both classes of service were apportioned to each classification in the ratio of the cost of the facilities necessary and proper for the rendition of each particular class of service separately, p. 296.

Apportionment, § 63 — Overheads of water utility — Fire protection and other service.

12. Overheads were allocated, in an apportionment between fire protection service and other water utility service, by making organization and promotion, engineering, administration during construction, and interest during construction proportionate to allocated totals of fixed capital items, excluding office furniture, tools, and other equipment, p. 297.

Apportionment, § 14 — Taxes — Fire protection and other water service.

13. Such taxes as are based on income or property values should be prorated to each service as an allowable cost in proportion to the fixed capital devoted to each service, in an apportionment between fire protection and other water utility service, while income taxes and capital stock taxes directly related to the ability of the company to do business and to produce an income should be apportioned by applying the ratio of the de-

preciated reproduction cost of property devoted to fire protection and the total depreciated reproduction cost, this ratio being equivalent to the allowable income for each, p. 298.

[July 5, 1938.]

INVESTIGATION *of water utility rates; new rate schedules established.*

By the COMMISSION: This inquiry and investigation to determine whether the rates of Marion Heights Water Company, respondent, as set forth in Supplement No. 1 to Tariff Pa. P. U. C. No. 7, are or may be unreasonable and excessive, was initiated by the Public Service Commission upon its own motion by order of December 23, 1935, under the authority of the Public Service Company Law.

In matters of this kind Pennsylvania Public Utility Commission has continued and completed its inquiry and investigation under the powers of § 1404 of the Public Utility Law (66 PS § 1534) which provides: "All litigation, hearings, investigations, and other proceedings whatsoever, pending under any act repealed by this act, shall continue and remain in full force and effect, and may be continued and completed under the provisions of this act."

Marion Heights Water Company, incorporated under the laws of the commonwealth in 1907, for the purpose of furnishing public water supply service in the borough of Marion Heights, Northumberland county, has been continuously owned and operated by the present interests since 1910. Of the 50 shares of outstanding capital stock, John L. Pipa, Sr., owns 48 shares while the remaining shares are divided between his two sons, Andrew M. Pipa and John L. Pipa, Jr.

Respondent's water supply system includes a metered distribution system, comprising 5,128 feet of 6-inch pipe, 2,874 feet of 4-inch pipe, 1,035 feet of 3-inch pipe, 1,819 feet of 2-inch pipe; service connections for about 400 consumers; 22 fire hydrants; and 2,725 feet of 6-inch transmission main connecting respondent's distribution system to the distribution system of Roaring Creek Water Company, from which company respondent purchases its total supply of water for resale.

Hearings were held in the instant proceeding on four different occasions; the initial hearing being January 16, 1936, and the final hearing on January 28, 1937. Respondent's brief was filed on May 24, 1937.

Inventory and Reproduction Cost

Respondent presents of record Exhibit No. 8 as evidence of an inventory of its property, used or useful in the public service, as of January 1, 1936. The Commission is in agreement with the inventory of property, as of that date.

The only measure of value of respondent's property of record is a depreciated reproduction cost estimate submitted by respondent. Both respondent and the Commission are in agreement upon the reproduction cost new of respondent's property as of January 1, 1936, of $29,571, obtained

from respondent's Exhibit No. 8, and as determined by the application of unit prices to the aforementioned inventory, and the addition of overheads including engineering, 5 per centum; organization and promotion, 1½ per centum; legal and administration during construction, 1½ per centum, and interest during construction, 1½ per centum. Of the total $29,571, approximately $12,000 represents facilities installed in 1935.

Accrued Depreciation and Fair Value

[**1, 2**] Using the 4 per cent sinking-fund method of determining accrued and annual depreciation, respondent's engineer determined, and submitted of record, accrued depreciation on respondent's depreciable property as $3,329.99. This Commission in this instance is in accord with the method used in determining depreciation and with the results of its application. Therefore, depreciated reproduction cost new of respondent's property on January 1, 1936, as determined by respondent, and allowed by the Commission follows as $26,241.01, and this amount will be considered fair value, since no other basis is established of record.

Operating Expenses

Respondent submitted, as Exhibit No. 3, a statement of operating revenues and expenses for the years 1933 and 1934, also Exhibit No. 9, a statement of operating revenues and itemized operating expenditures as experienced by the company from 1922 to 1932, inclusive. Operating expenditures for the years 1935 and 1936, are not tabularly exhibited, although presented by oral testimony.

Respondent states that the operating expenses as reported were incurred, and, as such, are the allowable operating expenses for rate-making purposes. On the other hand an accountant representing the Commission testified and presented as complainant's Exhibit No. 2, allowable operating expenses previously determined by the Commission in C. 5198, Marion Heights v. Marion Heights Water Co. (1923) 6 Pa. P. S. C. 258, and in A. 10217, Re Marion Heights Water Co. (1925) 7 Pa. P. S. C. 121; also testimony and complainant's Exhibit No. 4 relative to a comparison of the general operating expenses of respondent with sixteen other Class "C" water companies having like amounts of annual revenues.

In view of the following discussion and our finding of allowable operating expenses, it is important to review respondent's management and operating personnel. The record shows that respondent water company is solely owned and controlled by the Pipa family; that the father, John L. Pipa, Sr., is a director and president of the corporation, and is also employed by respondent as the manager and superintendent with a salary of $900 per annum; that a son of John L. Pipa, Sr., is a director, and secretary and treasurer of the corporation, and, further, is employed by respondent as the office clerk and bookkeeper with a salary of $1,440 per annum; that the remaining director, also a son of John L. Pipa, Sr., is included on the respondent's payroll as counsel with an annual retainer of $150 per annum; that a son-in-law of John L. Pipa, Sr., is a salaried maintenance employee; and that

the business office of respondent is owned by the Pipa interests and rented to respondent for $240 per annum.

I. *Water Purchased for Resale*

[3] Since Marion Heights Water Company purchases all water used through a metered connection to Roaring Creek Water Company, thereby providing the actual amounts and cost of water purchased, we believe that the latest trend relative to this expense should be allowed. The annual operating cost of water purchased since 1922 follows: [Table omitted.]

Respondent's installation of meters in November, 1932, in the major portion of its system, resulted in a decrease in the cost of water purchased for resale from a maximum of $4,208.24 in 1931, to $2,059.60 in 1936. We believe that the latest indication of this expense, $2,059.60 in 1936, should control and therefore $2,060 will be allowed. In a properly maintained and metered water supply system, excluding extraordinary circumstances, the relation of increased costs of water purchased for resale will be met by increased revenues derived from sale of such increases in amounts of water purchased for resale. Under these circumstances respondent is properly protected by this allowance for a fluctuating operating expense.

II. *Maintenance of Distribution System*

[4] The following tabulation has been compiled from the record to show respondent's maintenance expenditures from 1928 to 1935, inclusive. [Table omitted.]

Since the time of prior proceedings involving respondent, C. 5198—Marion Heights v. Marion Heights Water Co. *supra*, and A. 10217, Re Marion Heights Water Co. *supra*, wherein the Commission found a proper allowance for maintenance expense $50 per annum, respondent's charges for this expense have increased to a maximum of $776.39 in 1933 and to $530.04 in 1935. This increased expense is attributed to various and variable factors, which are set forth in the following discussion.

With the initiation of metered service in 1932, respondent experienced considerable maintenance expenditures brought about by reported consumer sabotage, meter tampering, and meter freezing. In each of these instances respondent had recourse against negligent or dishonest consumers as these acts were in violation of the rules and regulations of its filed tariff. Respondent not only failed to secure reimbursement for these expenses, but was unfamiliar in some instances with the violations inasmuch as its salaried maintenance employee states that he discovered many instances of meter tampering, but that he did not report all of the violations to his superiors. Manifestly, respondent's maintenance expenses were influenced by these circumstances and are indicated in the charges for this expense during 1933 and 1934. These charges in no manner can be indicative of a normal or proper allowance for this item.

The second factor that is responsible for the increased maintenance charges is the employment of a salaried maintenance employee which is reflected more fully in the maintenance charge of $530.04 in 1935. This item includes the salary of the repair-

man (ten months) $500, and materials, $30.04. Under these circumstances maintenance charges could not be less than $600 per annum, based upon the salary requirement alone. Another factor influencing maintenance expenses is the installation of respondent's additional fire protection service in 1935. This additional expense is estimated by respondent's engineers as $50 per annum and by the Commission engineer as $40 per annum.

As to a proper allowance for this expense we do not believe that the prior proceedings and their determinations of the expense hold at this time inasmuch as respondent's waterworks has so changed physically that an independent finding must be made at this time. Therefore, predicated upon respondent's statement that the maintenance employee's salary will be reduced from $600 per annum to $480 per annum, and upon the fact that evidence is of record that the said employee's number of hours devoted to maintenance work exceeded 600 hours, thereby offsetting the possible economy of an hourly or per diem employment basis, and possible extraordinary maintenance labor expense, we shall allow $500 per annum.

In the determination and allowance for this expense we in no manner approve respondent's maintenance personnel.

III. *General Expenses*

(*Exclusive of Annual Depreciation and Taxes*)

In 1931, prior to the installation of respondent's meters, general office salaries and expenses, also other miscellaneous expenses, were $1,066, which sum included a collector, $850 per annum; a secretary and treasurer, $150 per annum; counsel, $20 per annum; rent, $36 per annum; and miscellaneous office supplies and expenses, $10 per annum. In 1932, with the installation of meters, former personnel requirements were revised and increased to such an extent that in 1935, the corresponding accounts totaled $3,392.73, representing the following items: Manager and superintendent, $900 per annum; office salary, $1,440 per annum; meter reader, $403 per annum; counsel, $150 per annum; office supplies and expenses, $122.73 per annum; rent, $240 per annum; and insurance, $137 per annum. Complainant's Exhibit No. 3, however, states that the corresponding amount revealed by an examination of respondent's books, totaled $3,276.12 for 1935. The difference between that amount reported by complainant and the $3,392.73 reported by respondent, occurs in miscellaneous items which were adjusted, or excluded as nonallowable, by the Commission's accountant. Such items excluded were interest on delinquent taxes, rental of right of way, etc., included as general expense items, and the adjustment of the insurance expenditure to the amount actually expended in the year.

[5] Respondent avers that the increased expenses represented increased cost of management and operation of a metered water supply system as compared to an unmetered system; that the expenses were incurred and are proper for the service rendered; and that the services rendered are necessary for the proper operation of the utility.

The economies resulting from the installation of metered service should not be dissipated in the creation of unwarranted additional employment or increased salary expenses to existent officers or personnel without a corresponding need. In this instance the reduction of $2,317.44 in the cost of water purchased in the year 1935, as compared to 1931, prior to the installation of meters, is almost identical with the increase of $2,326.73 in general office salaries and expenses for 1935 over 1931. Thus the reduced cost of water purchased is completely offset and if the increased charges for general office salaries and expense were to be allowed, the ratepayer would receive no benefit from the very material reduction in cost of water purchased by respondent. Respondent has not substantiated the 200 per cent increase in general office salaries and expenses, subsequent to the installation of meters.

Respondent did not call upon John L. Pipa, Sr., manager-superintendent, to support the creation of his employment, in 1932, or to support the salary of $900 per annum received by him for work which is more properly chargeable to maintenance, as Mr. Pipa is said to be engaged in the inspection of respondent's distribution system for leaks or unauthorized taking of water. We have allowed $500 for maintenance, in itself an increase of approximately $300 over 1932 requirements, and we feel that this allowance is sufficient for proper maintenance including the requisite amount of patroling and inspection. The employment created has no counterpart prior to 1932, and the meter installation should not necessitate that additional expense in view of our later allowance for the employment of a meter reader and office personnel. Taking all of the evidence into consideration we are of the opinion and find that a proper allowance has been made for respondent's maintenance requirements, and that proper compensation for the manager-superintendent does not exceed $100 per annum for his remaining duties. We shall further allow the sum of $1,440 for office salaries, which is equal to the total now charged by respondent for its office requirements.

Although the salary of the meter reader is stated as $403 for 1935, respondent states that the aforementioned salary will be revised and that the expense for this work in the future will be $144 per annum, and we so allow. Since the meter reader will have access to all meters each month, as meter readings are made, it is expected that he will be of assistance in inspecting meters for faulty performance or attempted violations of the company's regulations.

[6] With the installation of meters, respondent increased the payment of an annual retainer to its solicitor, John L. Pipa, Jr., from $20 to $150. Although respondent states that this legal retainer has been paid since 1932, for whatever legal work is necessary, it is noted in respondent's Exhibit No. 8 that there was an additional expense for legal assistance in the amount of $300, in addition to the annual retainer of $150. John L. Pipa, Jr., the solicitor who received these fees, states that the sum of $300 pertains to the efforts of respondent to obtain a Federal loan, and the preparation and work with respect

to a bond and mortgage of respondent. If the annual retainer does not cover the performance of respondent's ordinary or incidental legal business, we cannot see its purpose. Legal expense in the form of such an annual retainer is disallowed, but for legal expense of respondent, we shall allow $50 per annum.

With respect to office rent, respondent states that its expense of $240 per annum represents a justifiable expenditure for the facilities available; that the actual rental value is in excess of the amount paid; and that other facilities for the purpose are not available in the community. We shall allow this expense of $240 per annum. Miscellaneous expenses for 1935 include various expenditures for stationery, printing, postage, and other items in the amount of $53.72, light, $18, and telephone and telegraph $51, totaling $122.73. The corresponding amount for 1934 was $106.19. With respect to this item we shall allow $125 per annum. Further, general operating expenses include a yearly premium of $137 for liability and compensation insurance, which sum will be allowed by us. With respect to Public Utility Commission expense, the Commission allowed respondent in prior proceedings $100 per annum as amortization of this expense. Respondent's Exhibit No. 9 indicates the expense of the 1922 proceeding as $773.50 and as $450 in 1932, the latter amount however, as previously related, should be reduced to $150 inasmuch as $300 of the reported expense represents legal fees for work in nowise related to the Commission. Since respondent's Commission expenses for the 10-year period were approximately $925, we shall allow $100 per annum for this item.

Based upon the foregoing we find the allowable annual operating expenses total $4,896, summarized as follows:

OPERATING EXPENSES
(*Exclusive of Depreciation and Taxes*)

I. Water purchased for resale	$2,060
II. Maintenance of distribution system	500
III. General expenses	
Office salary	1,440
Manager	100
Meter reader	144
Legal expense	50
Rent	240
Insurance	137
Commission expense	100
Miscellaneous expense	125
Total	$4,896

IV. *Annual Depreciation*

Respondent's annual depreciation charges were $491.18 in 1932, $362.93 in 1933, $568.47 in 1934, and $569.90 in 1935. These fluctuating depreciation charges of respondent are stated as due to the company's experience from year to year in estimating the remaining service life of its depreciable property. For example, respondent's engineer, using the 4 per cent sinking-fund method, estimated in January, 1936, that approximately $190 per annum, during the remaining service life of respondent's meters, will provide for their depreciation. On the other hand, respondent charged $319.69 in 1932 for this expense, when the meter installation was only two months old and later adjusted the depreciation charge in 1933 to 4 per cent of the cost of the meter installation and again in 1934 to 6 per cent of the cost. This arbitrary adjustment of depreciation charges is stated as due to respondent's experience in the early life of the meter in-

stallations when the excessive maintenance requirements of the meters presaged subnormal life expectancy. In this respondent did not estimate its depreciation with respect to normal wear and tear or obsolescence but its experiences due to faulty maintenance and inspection.

We shall allow annual depreciation as $413 which is the rounded sum of $412.60 stated by respondent's engineer in Exhibit No. 8 as the total annual depreciation necessary to provide for the depreciation of respondent's depreciable property at the end of its remaining service life.

V. *Taxes*

The record in the instant proceeding with respect to taxes is insufficient to determine an allowance for this expense item, in view of the changes in tax rates and the initiation of additional social security taxes. The following schedule of allowable taxes for rate-making purposes is therefore based upon respondent's experience in certain taxes while the remaining taxes have been calculated upon our findings of taxable net income and the social security tax requirements.

Allowable Taxes

Federal capital stock tax	$22
State capital stock tax	55
State income tax	98
Federal income tax	122
State unemployment compensation tax	60
Federal old age benefits tax	25
Total	$382

The allowances for Federal capital stock tax of $22 and state capital stock tax of $55 are equal in amount to the items of such taxes incurred in 1935. With respect to state and Federal income taxes, the respective allowances of $98, and $122, are based upon our finding, hereinafter set forth, of the allowable operating revenue to which respondent is entitled, of $7,266. The state unemployment compensation tax is based upon the 1938 rate of 2.7 per centum of the labor items in allowable operating expenses of respondent. Since there are less than eight employees, there is no such Federal tax. In the same manner Federal old age benefits tax is computed at the rate of 1 per centum of the same labor items.

Allowable Operating Revenue

[7] Based upon the foregoing component allowances and findings, the Commission finds and determines that the total annual operating revenue to which respondent is entitled is $7,266, summarized as follows:

6% Return on depreciated reproduction cost new of $26,241.01	$1,575
Operating expenses (exclusive of depreciation and taxes)	4,896
Annual depreciation	413
Taxes	382
Total	$7,266

Respondent's operating revenues for 1936, when fire protection charges were $330, totaled $7,251.15 or approximately $15 less than the Commission's finding of the total allowable annual operating revenues to which respondent is entitled including the proper revenue from fire protection service.

With an increase of $870 for public fire protection charges as proposed in respondent's Supplement No. 1 to Tariff Pa. P. U. C. No. 7, from $330 to $1,200 per annum, respondent's operating revenues of $8,121 would exceed by $855 that amount previously found as the proper annual revenue to which respondent is entitled.

Rates

[8] The instant proceeding was brought about by respondent's proposed increase in public fire protection charges, as set forth in Supplement No. 1 to Tariff Pa. P. U. C. No. 7, from $330 per annum to $1,200 per annum.

Briefly, in 1935, respondent water company in response to public demands for adequate fire protection service, constructed approximately 4,960 feet of 6-inch distribution main and installed 13 fire hydrants, costing, in total, approximately $12,000. Prior thereto there were 10 fire hydrants of which one was retired, so that there are now 22 fire hydrants. Respondent avers that the construction was requested by its consumers to provide adequate fire protection; that the proposed annual charge of $1,200 was submitted to and approved by the borough council as the proper remuneration for the construction; and that, since the construction was directly for the improvement of fire protection service, the additional cost should be met by corresponding additional revenue from fire protection service.

With respect to respondent's estimate of the proper fire protection charge, respondent's engineer testified as follows:

"We took $12,000 improvements, and took a 6 per cent return on that, which is $720, then we took $12,000 at 2 per cent for depreciation, which is $240, and that totaled $960. Then we added approximately $50, and amortization of the use of the water which we have to pay for flushing of the hydrants and for fires, the use of the water at fires, which made $1,000, and then we just arbitrarily added another $50 for the additional care and maintenance of such things. Prior to that service, for the limited fire protection we had, we were charging $330. So, this totaled $1,390 or $1,400, and we felt it was too heavy a charge and we cut it down to an even $100 a month, and that's the way the public fire protection was arrived at."

Suffice it to say that respondent's estimate of the fire protection charge is an arbitrary reckoning, and that we do not find this method of determination to be proper or equitable. Respondent's estimate assumes that the former charge of $330 for fire protection service was equitable, and that no portion of the aforementioned improvements of its distribution system could be assigned to domestic service requirements. With the exception of the fire hydrants, all other portions of the construction not only improved fire protection service, but also domestic service; and it is therefore necessary that each service should bear a proportional part of the cost in relation to the benefits directly obtained therefrom. By the extreme application of respondent's method, if the entire distribution system were to be replaced and enlarged for increased fire protection demands, the entire cost of the enlarged distribution system would be indirectly allocated to fire protection service and only the remaining portion consisting of services and meters would be otherwise allocated. Manifestly the method is inequitable.

[9] On the other hand, the Commission engineer presents of record an estimate of allowable fire protection charges, based upon an "excess plant"

calculation, as $700 per annum. In the process of developing this charge by the "excess plant" method, the Commission engineer created a hypothetical system capable of rendering domestic water service exclusively; the resultant system being similar in all respects to respondent's system prior to the fire protection improvements in 1935, with the exception of a section of 4-inch pipe which was reduced to 2 inches; the latter size being stated to be sufficient for domestic service exclusively. The reproduction cost new of this hypothetical system was then determined as $21,301, using the same unit prices and overheads previously used by respondent's engineer in the calculation for the entire system. Accrued depreciation on the hypothetical system was determined by the 4 per cent sinking-fund method as $5,301, and the depreciated reproduction cost as $16,000. The total allowance for return and annual depreciation on the hypothetical plant, based respectively on a 6 per cent return on the depreciated reproduction cost, and the 4 per cent sinking fund, is $1,459. In the same manner, annual return and depreciation on the entire existing system was determined as $1,987. Complainant's witness contends that the difference between the latter sum, $1,987 for the entire system, and $1,459 for the hypothetical domestic system, or $530 should be considered as one of the elements to be included in the charges for fire protection. In addition, complainant's engineer allowed $40 for annual operating expenses resulting directly from the fire hydrants, and $100 for excess annual operating expenses due to operation and maintenance of the enlarged distribution system. The total is $670 which has been rounded to $700.

While the "excess plant" method is advocated by some experts as an equitable basis of determining fire protection charges, it appears that its use should be restricted, especially since it arbitrarily assumes certain classes of water service to be of primary importance, regardless of the historical development of the utility or its use characteristics. The application of this principle tends to prejudice other classes of water service where those classes of service are incidental to fire protection service. Further, where the facilities for service are relatively limited in size, as in this instance, the "excess plant" method tends to apportion fixed capital to fire protection to the extent of the additional capital outlay for fire hydrants and similar appurtenances only, and for the incremental cost of the larger pipe and installation necessary for fire protection as compared with the cost of the smaller pipe and installation which would meet the requirements for other services. By this method no part of respondent's transmission main was assigned to fire protection service although the Commission engineer testified that the fire protection demands required a similar size main.

[10] The foregoing estimates and methods of determining fire protection charges are the only evidence of record regarding this matter. However, the attention of the Sitting Commissioner was directed to the "comparative" plant method, although no direct testimony or exhibits are submitted with respect to any determination to be made under such method. On page 321 the Sitting Commission-

er implied that, although the comparative plant method was not presented of record, consideration would be given to it, notwithstanding the testimony of both engineers based on other methods.

The following discussion and finding of the Commission is based upon a cost analysis, by which respondent's property and operating expenses have been segregated directly or by reasonable proportion into two classifications, being fire protection service and all other water service, and is tabularly presented as follows:

drants are directly allocated to fire protection service.

With respect to the larger mains used for both classes of service we have apportioned them to each classification of service in the ratio of the cost of the facilities necessary and proper for the rendition of each particular class of service separately.

For example, the 6-inch transmission main connecting respondent's distribution system to its source of supply, the Roaring Creek Water Company, will provide capacity for fire protection as well as all other serv-

Allocation of Fixed Capital and Accrued Depreciation

Inventory	Reproduction Cost New	Allocated to Fire Protection Service	Allocated to Other Service	Depreciated Fire Protection Service	Depreciated Other Service
Transmission main	$4,425.31	$2,212.65	$2,212.65	$2,018.03	$2,018.03
Distribution system					
(a) 6″ and Appur.	8,556.15	4,278.07	4,278.07	4,278.07	4,278.07
(b) 4″ and Appur.	3,665.53	1,832.76	1,832.76	1,482.70	1,482.70
(c) 3″ and Appur.	1,119.87		1,119.87		969.62
(d) 2″ and Appur.	1,501.36		1,501.36		659.73
Fire hydrants*	1,267.89	1,267.89		1,267.89	
Service mains	1,041.00		1,041.00		856.68
Meters	4,688.51		4,688.51		3,973.14
Tools and equipment	738.65		738.65		633.26
Subtotals	$27,004.27	$9,591.37	$17,412.87	$9,046.69	$14,871.23
Overheads					
(a) Engineering	$1,313.28	$479.59	$833.71	$469.84	$694.39
(b) Organization	413.68	151.07	262.61	151.07	262.61
(c) Legal	413.68	151.07	262.61	148.00	218.73
(d) Interest	426.09	155.60	270.50	152.48	225.96
Totals	$29,571.00	$10,528.70	$19,042.30	$9,968.08	$16,272.92

*Includes 13 hydrants installed by respondent in 1935. Does not include 9 hydrants paid for by the borough.

[11] In the foregoing tabulation we have first allocated the reproduction cost new of respondent's fixed capital that is solely used in each classification for fire protection service or other service. For example, such facilities as the 3-inch and 2-inch distribution mains, service connections, meters, tools, equipment, and furniture are entirely allocated to other service, while such facilities as hy-

ice. Testimony shows that this 6-inch main would be necessary and proper to individually provide respondent's fire protection service, or its other service, and we have therefore allocated one-half of it to each service. This view is contrary to an accepted principle that such facilities be allocated in direct proportion to the capacity necessary to meet the demands of each class of service and is

adopted in the instance as an equitable allocation according to the probable design for either of these two classes of use in the light of the historical development of the system. In explanation of our reasoning, let us consider the two other methods by which respondent's 6-inch transmission main may be apportioned to fire protection service and to other services. It probably would be no less than a 6-inch for either of these two classes of service alone; but, as we have noted before, the "excess plant" method would not allocate any portion of the transmission main to fire protection service. On the other hand the "comparative plant" method, based upon the division of the property according to the relative capacity to meet demands might assign upwards of 75 per centum of it to fire protection service since the required capacity for adequate fire protection service is much greater than for the other service.

All distribution mains and appurtenances larger than 3 inches have also been allocated to the two classifications equally, since it appears that these existing mains would be economical and proper for the adequate rendition of either fire protection or other service, separately.

[12] The remaining allocations to the two classifications of service, of the overheads, viz.: organization and promotion, engineering, administration during construction, and interest during construction, are proportionate to the allocated totals of the preceding fixed capital items with office furniture, tools, and other equipment excluded therefrom.

Deducting the accrued depreciation from each item in the same proportion as the allocations to each classification, we find that respondent's property to be properly allocated to fire protection service has a reproduction cost new, including overheads, at unit prices, as formerly allowed, of $10,528.70, and a depreciated reproduction cost of $9,968.08. Allowing a return of 6 per centum on the depreciated reproduction cost of $9,968.08, $598 return is determined to be proper and allowable as one element of fire protection charges.

Annual depreciation of property allocated to fire protection service is determined in the same manner as heretofore used in our allocation of the property to fire protection service and is tabularly shown as follows:

Allocation of Annual Depreciation

Inventory	Total Annual Depreciation	Allocated to Fire Protection Service	Allocated to Other Service
Transmission main	$10.63	$5.31	$5.31
Distribution system			
(a) 6″ and Appurtenances	23.35	11.68	11.68
(b) 4″ and Appurtenances	15.80	7.90	7.90
(c) 3″ and Appurtenances	4.70		4.70
(d) 2″ and Appurtenances	15.89		15.89
Fire hydrants	2.83	2.83	
Service mains	4.62		4.62
Meters	157.53		157.53
Tools and equipment	24.82		24.82
Subtotals	$260.17	$27.72	$232.45

Overheads			
(a) Engineering	$11.76	$4.74	$7.02
(b) Organization, promotion			
(c) Legal and administrative	3.71	1.35	2.36
(d) Interest during construction	3.76	1.51	2.25
Total	$279.40	$35.32	$244.08
4% of accrued depreciation	133.20	22.42	110.78
Total	$412.60	$57.74	$354.86

Other operating expenses that can be directly assigned to the fire protection service are variously reported. Respondent's engineer estimates such expenses as, cost of water used for fire protection service, $50, and for additional "care and maintenance," $50. The Commission engineer estimates such expenses as $40 for maintenance of the fire hydrants, and $100 for the additional expenses for operation and maintenance of the other facilities. We shall allow $140 for these expenses, as determined by complainant's engineer which is $40 in excess of that estimated by respondent.

[13] However, with an equitable distribution of cost to each service and an equitable portion of the income derived from each service, then such taxes as are based on income or property values should be prorated to each service, as an allowable cost, in proportion to the fixed capital devoted to each service. Of the total tax expenses of $382 allowed herein, we find that social security tax allowance of $85 is negligibly involved in fire protection service. The remaining taxes of $297, however, representing Federal and state income taxes and capital stock taxes, are directly related to the ability of the company to do business and to produce an income. Therefore, of this total remaining tax allowance of $297, we find that $113, should be allocated to fire protection service; which sum was obtained in this instance by applying the ratio of the depreciated reproduction cost of respondent's property devoted to fire protection ($9,968.08) and the total depreciated reproduction cost ($26,241), this ratio being equivalent to the allowable income from each.

The foregoing elements of allowable public fire protection charges total $909 per annum, as follows:

6% Return on depreciated reproduction cost of fire protection facilities ($9,968.08)	$598
General expenses, including maintenance, water purchased, etc.	140
Annual depreciation	58
Taxes	113
Total	$909

We shall allow $900 annual revenue from fire protection service.

It appears from the record that respondent's annual operating revenue under its proposed rates as set forth in Tariff Pa. P. U. C. No. 7, and Supplement No. 1 thereto, would exceed $7,266, the Commission's finding of the allowable annual operating revenue to which respondent is entitled; and it therefore follows that those proposed rates would be unjust and unreasonable and would yield an excessive return. It further appears that the proposed increase in rates for fire protection service as contained in Supplement No. 1 to Tariff Pa. P. U. C. No. 7 would be unjust, unreasonable, and unduly discriminatory; and

that the rates for all other service, as a whole, yield an excessive return; therefore,

Now, to wit, July 5, 1938, it is *ordered* nisi: That Marion Heights Water Company file, post, and publish on or before —— 1938, a new tariff to become effective —— 1938, establishing rates for fire protection service designed to yield annual operating revenue not to exceed $900 and for all other service designed to yield annual operating revenue not to exceed $6,366, based on consumer data for the year 1936, in both instances.

It is *further ordered:* That, concurrently with the filing of such new tariff, Marion Heights Water Company shall file supporting data with the proposed rates applied thereto and summarized to show the resulting corresponding annual operating revenue with respect to each class of service: provided, however, if all present rates for service other than fire protection service are revised on the basis of a uniform proportion (such as would result by establishing, in lieu of 5 per cent delayed payment penalty, a 10 per cent discount for prompt payment to be applicable to all rates); then, said water company shall not file said consumer data as supporting data; but, in lieu thereof, shall file with the Commission a statement of the effect of the fire protection service rates and the effect of the uniformly proportionate revision with respect to 1936 operating revenue from all other sources.

It is *further ordered:* That unless exceptions are filed hereto by Marion Heights Water Company, respondent, within fifteen days after service of this order nisi, this order shall become the final order in this proceeding.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Public Utility Commission

v.

T. W. Phillips Gas & Oil Company

[Complaint Docket No. 11323.]

Evidence, § 16 — Admissibility — Usage — Intention of contractors.

1. Evidence of usage in the territory of a natural gas company with respect to gas lease provisions is admissible to show the intention of the parties with regard thereto and to resolve any ambiguity in the meaning of the terms used, p. 302.

Gas, § 10 — Natural gas leases — Construction.

2. A provision in a gas lease that while gas is being sold off the premises the property owner may have gas free of cost for domestic purposes on the premises up to a specified amount, the property owner to make the necessary connection and assume all risks in using the gas and the gas

company not to be liable for any shortage or failure in supply, was, in view of evidence of usage, construed as constituting an exception and reservation of the specified amount of gas created in favor of the property owner, p. 302.

Public utilities, § 79 — What constitutes public utility service — Gas taken under lease provisions.

3. Natural gas taken by owners of land for their domestic purposes under gas leases which reserve to the owners a specified amount of gas, subject to the operation and pumping by the natural gas company leasing the property, is not gas devoted to the public use by the company, nor has the company any right so to devote it, p. 302.

Contracts, § 14 — Construction — Lease provisions.

4. The duty of the Commission is to construe a provision in a natural gas lease in the manner intended by the parties, p. 302.

Discrimination, § 16 — Free service —Gas taken under lease provision.

5. Operation by a natural gas company under the provisions of a gas lease which reserves to the property owner the right to take a specified amount of gas, which is not devoted to the public use, does not constitute the rendering of utility service and is not free service prohibited by law, p. 302.

[September 20, 1938.]

REHEARING *in investigation of the furnishing of natural gas to owners of property leased to a gas company; order to cease and desist rescinded. For former decision, see 22 P.U.R. (N.S.) 265.*

By the COMMISSION: On January 24, 1938 (22 P.U.R.(N.S.) 265) we issued our report and order in this proceeding in which we found that respondent had rendered free natural gas service pursuant to a provision of a lease which it held upon property owned by C. F. and O. C. Smith in North Mahoning township, Indiana county (hereinafter referred to as informal complainants), and that such service violated the provisions of the Public Service Company Law. In the said report and order respondent was ordered, inter alia, to cease and desist from rendering such free service within the commonwealth of Pennsylvania since it also constituted a violation of Art. III, §§ 302, 303, and 304 of the Public Utility Law.

Respondent thereafter, on February 18, 1938, filed a petition for rehearing on the ground that it desired an opportunity to present additional testimony with respect to the lease provision involved in the case. Before this petition could be acted upon, respondent, in lieu of a rehearing, requested leave to file a stipulation of record concerning the said lease provision, and further requested that if such leave were granted, the Commission reconsider the case in the light of the record as supplemented. The leave sought was accordingly granted. Respondent, on April 18, 1938, filed its

stipulation and the supplemented record is now before us for reconsideration.

The lease provision in question in the instant case provides as follows:

"While gas is being sold off these premises said first party may have gas free of cost for domestic purposes on said premises to the extent of 200,000 cubic feet per year, said first party to make the necessary connection and assume all risk in using said gas. The said second party shall not be liable for any shortage, or failure in supply of gas for said domestic purposes caused by pumping gas from said premises or otherwise, and said second party shall have the right to all gas free of cost that can be saved from producing oil wells."

In oral argument before the Commission, respondent took the position that the above-quoted provision must be construed as excepting 200,000 cubic feet of gas per year from the terms of the lease, which gas remained the property of informal complainants, and that consequently informal complainants, in using this gas, were not receiving utility service from respondent, but were merely using their own property. Nothing appeared in the testimony concerning local custom or usage with respect to this type of provision, nor concerning respondent's practices in operating thereunder. On that state of the record we concluded that the language of the lease provision, standing alone, could not be construed as respondents contended. Our reasons therefor are found in our report and order of January 24, 1938, *supra*.

The record, as now supplemented, contains a showing that the type of lease provision in question here is quite common in the territory within which respondent operates, and that the portion of the said provision wherein it is stated that the lessor may have a certain amount of gas free of cost for domestic purposes is commonly understood by the interested parties to mean that such amount is excepted from the operation of the lease and does not become the property of respondent. Further, it appears that respondent operated under the provision of the Smith lease and habitually and customarily has operated under similar provisions of other of its gas leases, as though the lease provided that (as respondent has stipulated):

"First party (lessor) excepts and reserves from the leased premises through any well thereon producing gas only, provided the gas pressure is high enough, gas to the extent of 200,000 cubic feet per year, or such part thereof per year as first party requires; subject, however, to the operation and pumping by second party (lessee) of its wells and pipe lines on the premises, the first party to make the necessary connection and assume all risk in using the gas. Said connection must be made at a place designated by second party and may be at any gas well on said premises or on any gas line of second party on said premises; subject, however, to the right of second party at any time to abandon, take up, remove, repair, or change any of its lines or abandon any of its wells, second party not being liable for any expense, shortage, or failure of gas which may arise by reason of said changes, lack of gas pressure, or abandonment. First party agrees to pay for all gas in excess of the amount excepted and

reserved at second party's established rate for domestic consumers in the vicinity, and measurement and regulation shall be by meter furnished by second party and regulators furnished by first party and set at the tap on the well or line. Second party shall have the right to all gas free of cost that can be saved from producing oil wells."

[1–5] We are of opinion that the evidence of usage in respondent's territory with respect to the lease provision here under consideration, and with respect to similar provisions in other of respondent's leases is admissible to show the intention of the parties with regard thereto and to resolve any ambiguity in the meaning of the terms used. We are further of opinion that the language of the instant provision itself as supplemented and clarified by this evidence of usage, may properly be given the construction contended for by respondent, namely, that it constitutes an exception of 200,000 cubic feet of gas per year created in favor of informal complainants.

So construed, this provision is of an entirely different nature from the various free service agreements of other types of utilities which have been declared invalid by our courts. In such free service agreements the utilities involved contracted to render service in consideration of some right or thing granted to them and the service which the utilities agreed to furnish was exactly the same service that it was furnishing to its other patrons and making a charge therefor. In none of these cases was there an exception by the grantor for his own use of a part of the subject matter of the agreement, as in this case. It can be said here that no part of the gas used by informal complainants for their domestic purposes was ever devoted to the public use by respondent, nor had respondent any right to so devote it.

The duty of the Commission is to construe the provision here involved in the manner intended by the parties. In this particular case, the provision may be construed in the manner intended by the parties without violating the Public Utility Law. Consequently it follows that operation under this provision was not the rendering of utility service, and therefore, not in violation of the Public Service Company Law, nor the Public Utility Law, and that the rule to show cause in this case must be dismissed; therefore,

Now, to wit, September 20, 1938, it is *ordered:* That the report and order in this case issued January 24, 1938, be and the same is hereby rescinded.

It is *further ordered:* That the rule to show cause be and is hereby dismissed.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Mrs. T. B. Fitzpatrick

v.

Pennsylvania Power & Light Company

[Complaint Docket No. 11237.]

Rates, § 255 — Advantageous schedule — Duty of utility to advise.

1. A public utility is under a duty to inform the consumer that he is placed upon a higher rate schedule because of an improper arrangement of equipment when the consumer complains of the amount charged him for service, p. 305.

Rates, § 255 — Duty to advise customer — Minimizing cost.

2. A public utility, upon request, should advise a customer of the best method of fulfilling his requirements at the minimum cost, when the company has a number of schedules, each applicable to a different type of service, since the consumer is not in a position to determine this himself, p. 305.

Rates, § 255 — Duty to advise customer — Commercial and residential schedules.

3. A public utility company acted unjustly and unreasonably when it failed to inform its customer, after complaint had been made, that she was being charged commercial rates for residential consumption because one light in her place of business was attached to the meter which measured the current used in her adjoining residence, p. 305.

Reparation, § 50 — Time limit.

4. A public utility, under the statute, need grant no award of reparation for any bill paid prior to two years preceding the filing of the complaint with the Commission, p. 307.

[September 19, 1938.]

COMPLAINANT, *by petition, seeks reparation for alleged excessive rates for electric service; complaint sustained and respondent ordered to repay overcharges.*

By the COMMISSION: Mrs. T. B. Fitzpatrick, complainant, by petition filed August 19, 1936, seeks reparation for alleged excessive rates charged by the Pennsylvania Power & Light Company, respondent, for electric service at complainant's home, 123 Market street, Williamstown.

Complainant's husband, prior to 1926, operated a barber shop on the first floor of their home at the above address. One meter measured the energy in the barber shop and another the energy in the remainder of the house. In April, 1926, complainant's daughter established a beauty parlor

in the basement of the home. Six months later the beauty parlor was moved from the basement into the barber shop. The house at this time was rewired into two main circuits: one for all the lights in the residence, including one dome light in the beauty shop; the other, for heating appliances in the beauty parlor, as required by the schedule designated only for consumers having heating appliances. As the house circuit had upon its line the one light in the beauty parlor, the entire circuit, in accordance with the respondent's uniform practice, was placed upon the commercial rate schedule.

At the time of the rewiring the electrician hired by Mrs. Fitzpatrick informed her it would not be desirable to remove the one dome light from the residential circuit as the damage done in tearing up a floor to accomplish this would be greater than any possible saving of the cost of current used in this one light. In addition, the tariffs of respondent's predecessor would not have permitted the dome light to be included in the same schedule as the beauty parlor equipment.

On December 24, 1936, the respondent instituted a change in tariff schedules, so that, if the dome light had been connected to the same meter as the beauty parlor equipment, the remainder of the house would have been placed upon the residential schedule. However, in accordance with the practice of the company, as the one dome light was in commercial use, the entire circuit with which it was connected was charged commercial rates. In all, the respondent and its predecessors have changed their tariff schedules five times since 1926 and upon each revision, if the house had been properly wired, the complainant would have been placed upon the residential schedule and not the commercial.

From October, 1926, until August, 1935, Mrs. Fitzpatrick continually complained the charges were excessive. Almost every time a bill was paid a complaint was made at the office; the meter reader was informed the bills were too high; in 1930 or 1931 a complaint was made directly to the district manager of the respondent; an employee whose duties required him to adjust complaints was told the bills were high and he in turn advised the district manager. The company tested the meters a number of times and informed Mrs. Fitzpatrick there was nothing wrong with them. The respondent, however, did not inform Mrs. Fitzpatrick that if the one dome light of the beauty parlor was connected to the beauty parlor meter, the remainder of the house would be placed upon the residential schedule.

In August of 1935 the complaint adjuster, who also was an electrical appliance salesman of respondent, endeavored to sell Mrs. Fitzpatrick an electric refrigerator. When informed the bills were already exorbitant, the adjuster hired an electrician who then wired the dome light to the beauty parlor meter. The adjuster himself paid the $4 cost of rewiring because as he and the district manager stated "Anything to satisfy a customer." The refrigerator was then purchased by the complainant and her service was placed upon the residential basis.

The gist of complainant's contention is that the respondent neglected to inform her, after complaint had been made, that if the one dome light in the

beauty parlor was disconnected from the house meter, her house circuit would be placed upon the residential schedule. Respondent contends that the residential rate was not necessarily cheaper than the commercial rate but the amount of the bill might be lower if enough current was consumed to place the complainant upon a lower bracket of the residential schedule. A study has been made of the bills charged under respondent's commercial rate as compared with the residential rate. From the time the schedule of December 24, 1926, went into effect until the last revised schedule of October 1, 1935, every monthly bill based upon the residential rate would have been smaller than the sum actually charged under the commercial schedule.

It is important to distinguish this situation from one where the consumer has an option of a number of rates and elects to receive service under one. In the present proceeding the complainant did not have a choice of two different rates for the same type of service. She was placed by the respondent, in accordance with its policy, upon the commercial schedule, when, if she had been properly advised, she would have received service upon the residential basis.

[1] When the schedule of rates was revised on December 24, 1926, respondent, at that time, in order to place the complainant upon the proper schedule, necessarily had knowledge of the fact that complainant was placed upon the commercial rate basis because the one dome light was attached to the wrong meter and that rewiring would have enabled her to obtain the residential rate. The respondent, after complaint was made, should have explained to complainant why she was paying upon the commercial basis. We do not mean to say that a public utility must examine the facilities used by every one of its consumers and advise him of changes which will result in obtaining a cheaper rate. However, when complaint is made, and the utility ascertains the consumer is placed upon a higher schedule because of an improper arrangement of equipment, the utility is under a duty to inform the consumer of that fact.

[2, 3] A public utility, especially an electric company, normally has a number of schedules and each is applicable to a different type of service. One who applies for service is in no position to determine which of a number of possible wiring arrangements would properly fit his needs at the lowest possible cost. The public utility is best equipped to advise the consumer, and upon the basis of fair dealing, the utility, when requested, should advise the consumer of the best method of fulfilling his requirements at the minimum cost. It is certainly unjust and unreasonable to keep from the consumer information, known to the utility, that the consumer is paying upon a higher basis because of improper wiring but to reveal that fact and make the required change gratis when it becomes advantageous in order that an electric appliance may be sold.

In Rhodes-Burford Home Furnishing Co. v. Union Electric Light & P. Co. (Mo. 1915) P.U.R.1916B, 645, 664, the Public Service Commission, said:

"It would not be reasonable to require a utility offering more than one schedule to check up at frequent inter-

vals all of the consumers who are being furnished under any of these schedules, after the proper schedule has once been selected, for the purpose of determining whether the consumer's connected load, conditions, or manner of use or quantity of energy used have changed; in brief, whether the consumer is still being furnished under the more economical schedule. It is entirely reasonable, however, to require a utility to make such an investigation if the consumer feels that there has been a change in his connected load or maximum demand or other condition of use, which in his opinion would cause some other schedule then in effect to offer him a distinct advantage."

Also in Oklahoma Gas & E. Co. v. Shipley (1935) 190 Ark. 758, 767, 80 S. W. (2d) 635, 640, the supreme court of Arkansas said:

"Public service utilities have a virtual monopoly of the business in which they are engaged, and a different rule should obtain between them and their customers than that which obtained at common law between vendor and vendee. In ordinary cases where one purchases the goods of another, if the purchaser is not satisfied with the terms or price at which a commodity is offered, he may procure that commodity from another dealer. But such is not the case with those dealing with public service corporations—they must take the commodity offered at the terms and prices named, or do without. Under modern business conditions, to do without the commodity would prove disastrous. It must be used and the required price paid. Therefore, following principles of natural justice, the utility in the first instance should take cognizance of the customer's needs, and, where several rates are in effect, give him the benefit of the one most favorable to his requirements. Then, when the utility discovers that the condition of the consumer has changed and he is entitled to another and more favorable rate, it is its duty to give the consumer the benefit of this discovery.

"In the case at bar, the testimony tends to establish the fact that for more than two years before plaintiffs were given a more favorable rate they made frequent complaints and requests that the cause of their excessive electricity bills be ascertained and that they be given relief. They possessed no technical knowledge relating to the use of electricity, and had no appliances by which the facts to give them the right to a more favorable schedule could be ascertained. The defendant had both. The parties were not on equal footing, but one held superior position to the other, and it was the duty of the party holding the superior position, according to every principle of fair dealing, to make the investigation and place the plaintiffs under the schedule most favorable to them and to which they were entitled. From the moment the defendant became aware of the availability of Schedule E to the business of plaintiffs, it became responsible to plaintiffs for the difference between the rates it was then charging and the rates to which they were entitled."

With these statements we are in complete accord and it is upon the bases expressed therein that full justice will be accorded, for, in the vast majority of cases, the consumer is completely ignorant of tariff schedules

and wiring connections and it is only fair that the public utility, when appealed to, should give the consumer the benefit of its technical experience and not take advantage of its superior knowledge by misleading the consumer. We, therefore, find that the respondent acted unjustly and unreasonably when it failed to inform the complainant, after complaint had been made, she was placed upon the commercial schedule because the one dome light in the beauty parlor was attached to the meter which measured the current used in the remainder of the house.

[4] As the petition in this proceeding was filed while the Public Service Company Law of 1913 was in effect, its provisions are applicable. Article V, § 5, of that law (which has been substantially retained under § 313 (a) of the Public Utility Law) provided:

"No reparation, as herein provided, shall be awarded by the Commission unless the complaint or petition shall have been filed with it within two years from the time when the cause of action accrued." (66 PS § 511.)

As the cause of action accrued upon payment of each bill and as no evidence has been submitted which indicates any action of the respondent to forestall the filing of a complaint, no award of reparation can be made for any bill paid prior to two years preceding the filing of the complaint with the Commission, or August 19, 1934. Cover v. Highspire Water Co. 5 Pa. P. S. C. 625, P.U.R.1922B, 639; McNally v. Bell Teleph. Co. (1936) 15 Pa. P. S. C. 151.

The respondent has submitted a chart showing the exact number of kilowatt hours registered each month upon the meter which measured the energy supplied to the residence of complainant. As the difference between the commercial and residential rate for one light would not be of serious consequence, we have included in our computation the dome light in the beauty parlor as a part of the residential load. The following chart shows in the first column the kilowatt-hour consumption per month; the second column is the figure computed by the Commission if the residential schedule had been applied; the third column represents charges as collected by the respondent; and the fourth column represents the saving or refund:

Year	Month	Kw. Hr. per Month	Bill per Month	As Billed by Co. for Month	Difference in Amount of Saving
1934	August	74	$5.61	$5.80	$ .19
"	September	100	6.93	7.75	.82
"	October	94	6.69	7.30	.61
"	November	122	7.81	9.40	1.59
"	December	114	7.49	8.80	1.31
1935	January	116	7.57	8.95	1.38
"	February	92	6.61	7.15	.34
"	March	78	5.87	6.10	.23
"	April	92	6.61	7.15	.54
"	May	86	6.37	6.70	.33
"	June	86	6.37	6.70	.33
"	July	68	5.22	5.35	.13
"	August	48	3.85	3.85	None
"	September	50	4.00	4.00	None
"	October	32	2.37	2.37	None
"	November	38	2.76	2.76	None
"	December	53	3.73	3.73	None
1936	January	54	3.80	3.80	None
"	February	48	3.40	3.41	None
"	March	57	3.99	3.99	None
"	April	50	3.54	3.54	None
"	May	47	3.34	3.34	None
"	June	43	3.08	3.08	None
"	July	42	3.02	3.02	None

This shows that since August, 1935, when the rewiring was done at respondent's expense and complainant placed upon the residential schedule, the charges have been proper. From August, 1934, until August, 1935, the overcharge amounted to $7.80, which sum plus interest upon each excessive

payment represents the refund due complainant; therefore,

Now, to wit, September 19, 1938, it is *ordered:* That the complaint be and is hereby sustained.

It is *further ordered:* That respondent pay complainant the sum of $7.80 plus interest at 6 per cent on each excessive item from the date of its payment, or a total of $9.54.

It is *further ordered:* That respondent pay such sum to complainant within thirty days from receipt of a copy of this order.

WISCONSIN PUBLIC SERVICE COMMISSION

Re Interstate Light & Power Company

(2-U-1292.)

Intercorporate relations, § 13 — Liability between affiliates — Interest rate reduction.

1. A subsidiary corporation, in view of close intercorporate affiliations, was held to have received the benefit of a reduction in interest on bonds held by its parent corporation, when authorized by resolution of the board of directors of the parent corporation, during a period when rights of the parent company's creditors did not prevent such a reduction, notwithstanding assertions that the resolution was not binding on the subsidiary, p. 309.

Accounting, § 25 — Interest rate reduction — Liability between affiliates.

2. A subsidiary corporation which has received the benefit of a reduction in interest on bonds held by a parent corporation, pursuant to a resolution adopted by the board of directors of the parent corporation, must make proper entries in its books to reflect such reduction, p. 309.

Intercorporate relations, § 13 — Liability between affiliates — Rights of creditors — Interest reduction.

3. A reduction in interest on bonds of a subsidiary corporation held by the parent corporation, pursuant to resolutions of the board of directors of the parent corporation, was held to be ineffective as against the rights of creditors to whom the bonds had been pledged, where consent to the interest rate reduction had not been obtained from the creditors, p. 309.

Accounting, § 25 — Interest liability — Affiliated companies — Rights of creditors.

4. The liability of a subsidiary corporation to pay interest on bonds held by its parent corporation during a period in which the bonds are pledged to creditors who have not consented to an interest rate reduction ineffectually authorized by the board of directors of the parent corporation must be recorded on the subsidiary company's books, p. 309.

[August 25, 1938.]

INVESTIGATION *as to alleged violation of statutes relating to intercorporate relations and entry on books of subsidiary; rulings made as to proper entries on books.*

APPEARANCES: D. A. Myse, Attorney, of the Commission staff; John M. Campbell, Bundy, Beach & Holland, Attorneys, Eau Claire, Interstate Light and Power Company.

By the COMMISSION: On July 5, 1938, the Commission entered its notice of investigation with respect to the above matter.

Hearing: Madison, August 1, 1938,

Presiding: Chairman Hunt, Commissioner Nixon, Commissioner Green, and Examiner Jasper.

On March 17, 1916, May 26, 1917, July 21, 1922, and January 11, 1924, the Commission issued certificates authorizing the Interstate Light and Power Company to issue an aggregate of $966,000 principal amount of first mortgage bonds, dated April 1, 1916, bearing interest at the rate of 6 per cent per annum. These bonds are now owned by Northern States Power Company, a Minnesota corporation hereinafter referred to as the Minnesota company, an affiliate and sole stockholder of Interstate Light and Power Company. Prior to February 1, 1937, the Minnesota company had pledged these bonds as collateral security for its then outstanding bonds, and when the Minnesota company's bonds were refunded as of February 1, 1937, the bonds of Interstate Light and Power Company were released from pledge and repledged as part of the security for the new bonds.

[1-4] On September 19, 1934, the board of directors of the Minnesota company adopted the following resolution:

"Be it further resolved that the officers of this company be and they are hereby authorized in behalf of this company, to charge hereafter interest on the indebtedness to this company from said respective corporations at the rate of 6 per cent per annum, provided that in no event shall such interest exceed the earnings of said respective corporations available for the payment thereof during the periods in question."

The Interstate Light and Power Company was one of the companies referred to in this resolution, and accordingly a lower rate of interest was collected from the company than the 6 per cent provided for when the issues were authorized. This situation raised the question of whether the bonds outstanding were of a different character than authorized by the Commission and a resultant violation of the above certificates.

At the hearing the attorney for the Interstate Light and Power Company filed a brief summarizing its position. In substance, this position is that the resolution of the Minnesota company of September 19, 1934, was not binding on Interstate Light and Power Company since it was never accepted by that company, that no consideration of any kind passed to the Minnesota company for it, that it amounted to no more than a statement by the Minnesota company that it would accept less than the amount actually due for interest on the bonds, and that at least since February 1, 1937, the Minnesota company was not authorized to accept less than the 6 per cent interest due on said bonds because the bonds were and are pledged as collateral for the Minnesota company's bonds and any action to accept less than the 6 per cent interest would require the consent of

its creditors, which consent has not been obtained. For these reasons it is asserted that the Interstate Light and Power Company was never released from its liability to pay the full interest rate of 6 per cent and that the Minnesota company now proposes to rescind its resolution of September 19, 1934, and insist that at least since February 1, 1937, Interstate Light and Power Company record its full liability to pay the difference between the 6 per cent interest expense and the amount actually paid.

In so far as the liability of Interstate Light and Power Company as to full interest payments prior to February 1, 1937, is concerned, it would be more convincing if the two companies were dealing with each other "at arm's length" as an ordinary debtor and creditor. But when the creditor is as closely affiliated with the debtor as these companies are and have been during the entire life of these bonds, it is difficult to give much weight to the claim that the debtor never accepted the reduction in the interest rate. In this case the creditor was and is the sole stockholder of the debtor (except for such stock as may be held by directors as qualifying shares) and, at the date of the resolution of the board of directors of the Minnesota company referred to above, substantially all of the officers and directors of the debtor were officers or directors of the creditor. When consideration is given to the close affiliation of these two companies the Commission is of the opinion that the Interstate Light and Power Company received the benefit of the reduction of this interest on the bonds and that this reduction should be properly recorded in its accounts.

In regard to the interest expense, subsequent to February 1, 1937, a different picture is presented. There appears to be merit in the contention of the Interstate Light and Power Company that since these bonds are pledged as collateral for the creditor company's bonds, said company was not authorized to accept less than the full 6 per cent interest without the consent of its creditors as represented by the trustee under the Minnesota company's indenture, and that such consent was not obtained. It would appear, therefore, that the liability of Interstate Light and Power Company to pay this interest on bonds subsequent to February 1, 1937, should be recorded on its books.

The Commission finds that the deficiency in interest payments by the Interstate Light and Power Company on its bonds up to February 1, 1937, should be recorded in its accounts by a debit to Account 271, Earned Surplus, and a credit to Account 227, Matured Interest.

The Commission further finds that concurrently an amount equal to such matured interest unpaid should be debited to Account 227, Matured Interest, and credited to Account 270, Capital Surplus, which entries when made will result in recording the facts as evidenced by the proceedings herein and correct any apparent violation of Chap. 184, Statutes, which may have occurred prior to February 1, 1937, with respect to the interest on these bonds.

The Commission further finds that with respect to the deficiency of interest payment on bonds by the Interstate Light and Power Company subsequent to February 1, 1937, the full liability

for interest at 6 per cent should be recorded in its accounts.

It is therefore *ordered,* that Interstate Light and Power Company record in its accounts the amount by which interest paid on its presently outstanding bonds for the period prior to February 1, 1937, has been less than 6 per cent per annum by a debit to Account 271, Earned Surplus, and a credit to Account 227, Matured Interest, and concurrently debit Account 227, Matured Interest, and credit Account 270, Capital Surplus.

It is *further ordered,* that Interstate Light and Power Company record in its accounts the liability to pay commencing with February 1, 1937, the full 6 per cent interest on its presently outstanding bonds; and, to the extent that there has been failure to record this liability, Account 271, Earned Surplus, shall be debited and Account 223, Payables to Associated Companies, shall be credited with the amount due Northern States Power Company of Minnesota.

It is *further ordered,* that verified copies of the journal entries recording these transactions shall be filed with the Commission not later than thirty days after the date of this order.

WISCONSIN PUBLIC SERVICE COMMISSION

J. A. Brokish et al.

v.

Wisconsin Power & Light Company

[2-U-1294.]

Re Wisconsin Power & Light Company

[CA-513.]

Service, § 174 — Extensions — Appliance covenants.

1. Covenants committing prospective customers to purchase a certain amount of appliances as a condition of obtaining an extension of service should be eliminated from service agreements, p. 312.

Service, § 488 — Extensions — Failure to fulfil promise — Complaint.

2. Failure of a public utility to fulfil its promise to extend service for almost a year constitutes just and reasonable grounds for filing complaints, which are the means of advising the Commission of relations between the utility and the public, p. 313.

Service, § 174 — Extensions — Failure to construct.

3. A public utility company applying for authority to construct an extension should have some definite plans in mind, and it is unreasonable under ordinary circumstances for the company to wait almost a year before commencement of work on the extension, p. 313.

[August 13, 1938.]

INVESTIGATION *to determine why a power company had not made proposed extension of rural distribution system after receiving necessary authorization; construction and operation ordered.*

APPEARANCES: Of the Commission staff: Beatrice W. Lampert, Counsel, and Walter E. Caine, Senior Assistant Rate Analyst; J. A. Brokish, Dodgeville, and E. W. Stocker, Ridgeway, for the petitioners; William Ryan, Attorney, Madison, for the Wisconsin Power and Light Company.

By the COMMISSION: On August 25, 1937, the Commission received an application from the Wisconsin Power and Light Company for authorization to extend its rural distribution systems. On September 16, 1937, the Commission advised the applicant that in view of the waiver of objection by the Rural Electrification Coördination office further authorization under the then effective general Commission order in docket 2–U–965 (15 P.U.R. (N.S.) 364) was unnecessary.

On June 22, 1938, it appeared that the extension had not been made. The Commission instituted an investigation upon complaint of J. A. Brokish and others in docket 2–U–1294 and reopened docket CA–513 embracing the application for authority.

Hearing: July 12, 1938, at Madison.

Presiding: Examiner Jasper.

[1] The distribution lines proposed to be built by the applicant are entirely within the town of Linden, Iowa county. The applicant's local manager at Dodgeville testified that because of a heavy construction program in this general territory during the fall of 1937 and because of considerable road relocation during the spring of 1938 the company had been unable to make the extension herein proposed. The record indicates that this extension in all probability will be completed about September 1, 1938, which is almost a year after its authorization. There is considerable conflicting testimony as to discussions had with respect to this extension and some testimony to the effect that an appliance salesman for the company advised the complainant that unless a certain amount of appliances were purchased he would not obtain the extension. Such sales methods cannot be approved by the Commission. In 2–U–1170, Rural Extension and Service Rules and Practices of the Wisconsin Power and Light Company in its Monroe District, the Commission had a somewhat similar problem which resulted in the Commission's requiring the elimination of appliance covenants from the service agreement. The practice complained of in the instant matter was before the issuance of the above order and it is

assumed that the practice has been discontinued. The company must be responsible for the acts of its agents and further complaint in this respect will warrant formal investigation.

[2, 3] The company appears to resent the filing of the complaint. The Commission is of the opinion that the petitioners were justified in their action after receiving promises over an extended period of time without results. It is only through complaints of this nature that the Commission can be advised of relations between the utility and the public. There is no doubt but that the company had had a heavy construction program. It would appear, however, that when an application to construct is made the company has, or should have, some definite plans in mind and it is unreasonable under ordinary circumstances for the company to wait almost a year before commencement of work on the extension.

The Commission finds that immediate construction of the proposed extension in the town of Linden, Iowa county, is required by public convenience and necessity and by reasonable standards of the service of applicant.

It is therefore *ordered,* that applicant, Wisconsin Power and Light Company, construct and place in operation the extension proposed in the town of Linden, Iowa county, not later than September 15, 1938, and notify the Commission when the same is completed.

FEDERAL COMMUNICATIONS COMMISSION

Re Milton & Milton Junction Telephone Company

[Docket No. 3360.]

Intercorporate relations, § 14.1 — What constitutes control — Telephone companies.

1. The use of the word "control" in § 2 (b) (2) of the Federal Communications Act of 1934, relating to the exemption of connecting intrastate telephone companies where control is absent, means actual as well as legal control and includes and means the power to exercise control either negatively or affirmatively, directly or indirectly, p. 317.

Intercorporate relations, § 14.1 — What constitutes control — Telephone companies — Interest in collateral.

2. An intrastate telephone company is not entitled to exemption from Commission jurisdiction under § 2 of the Federal Communications Act of 1934, relating to connecting telephone companies where control is absent, when another company has the power to and does control the management and operation by reason of the fact that it has furnished the entire purchase price for the company to the company's president and holds all the stock

as collateral for the loan, having in its possession, endorsed in blank, certificates evidencing such stock with the right to foreclose its lien thereon at any time, p. 317.

[August 2, 1938.]

PROCEEDING *to determine whether a telephone company is a carrier subject to all the provisions of the Federal Communications Act of 1934 or is an intrastate connecting carrier not controlling or controlled by another carrier; company held to be subject to act.*

APPEARANCES: John S. Allen, on his own behalf; Frederick Sammond, on behalf of the Wisconsin Telephone Company; Alvin C. Reis and Philip H. Porter, on behalf of the Public Service Commission of Wisconsin; Elizabeth C. Smith, on behalf of the Commission.

By the COMMISSION: This is a proceeding to determine whether the Milton and Milton Junction Telephone Company is a carrier subject to all provisions of the Communications Act of 1934, hereinafter referred to as the act, applicable to wire telephone carriers, or is a connecting carrier engaged in interstate communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with, it, within the meaning of the provisions of § 2 (b) (2) of the act.

On November 20, 1935, the Commission, telephone division, ordered the Milton and Milton Junction Telephone Company to file responses to Telephone Division Orders Nos. 1, 2, 3, 5, 6, 6A, and 9 [1] within thirty days from the date of the service of such orders upon the carrier or, in lieu thereof, to file an answer setting forth the facts upon which the company relied as justification for its failure and refusal to respond to such general orders of the Commission. Thereafter, on December 21, 1935, the Milton and Milton Junction Telephone Company filed its response to Telephone Division Order No. 6.

The Milton and Milton Junction Telephone Company, hereinafter called the Milton Company, filed its verified answer in which it admits that it is engaged in interstate communication for hire, but alleges that it engages in such communication solely through physical connection with the facilities of the Wisconsin Telephone Company, hereinafter referred to as the Bell Company, an interstate carrier, which it further alleges is not directly or indirectly controlling or controlled by, or under direct or indirect common control with, it, and contends that pursuant to § 2 (b) (2) of the act it is a connecting carrier and, therefore, not required to file responses to the other orders in question.

[1] Orders Nos. 1, 2, 3, 5, 6, 6A, and 9 referred to are general orders of the telephone division directed to wire telephone carriers subject to th act, requesting certain detailed information described in the orders. Order No. 6 was issued pursuant to § 202 of the Communications Act and is an order to which a connecting carrier must respond. These orders are set out in full in 1 F.C.C. Reports, at page 50, et seq.

A hearing was held before the chief examiner of the Commission, at which hearing the Milton Company admitted that it was engaged in interstate communication for hire, but alleged that it engages in such communication solely through physical connection with the facilities of the Bell Company, and adduced testimony and evidence in support of its contention that it is a connecting carrier under § 2 (b) (2) of the act.

The examiner submitted his report (III–16), recommending that the company be classified as a carrier subject to all provisions of the act, but before final report and order of the Commission was entered the case was remanded for further hearing. Pursuant to the order of the Commission remanding the case for further hearing, another hearing was held before the same examiner. The examiner subsequently submitted a supplemental report, again recommending that the company be classified as a carrier subject to all provisions of the act applicable to wire telephone carriers.

According to § 3 (u) of the Communications Act (47 USCA, § 153u), "'connecting carrier' means a carrier described in clause (2) of § 2 (b)."

Section 2 of the Communications Act of 1934 (47 USCA, § 152) provides: "(a) The provisions of this act shall apply to all interstate and foreign communication by wire . . . (b) . . . nothing in this act shall be construed to apply or to give the Commission jurisdiction with respect to . . . (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carrier; except that §§ 201 to 205 of this act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in clause (2)."

The record in this case shows that the Milton Company is a corporation organized and existing under the laws of the state of Wisconsin and operates a telephone exchange at Milton Junction, Wisconsin.

The Milton Company has a physical connection with the Wisconsin Telephone Company whereby it engages in interstate and foreign communication for hire.

The Milton Company was organized in 1900, and has outstanding 400 shares of common stock at the par value of $100 each. It has no funded debt and no preferred stock outstanding. One John S. Allen acquired the outstanding stock of this company in 1928. He borrowed $88,000 from the First Wisconsin Company with which to pay for the stock and pledged all of the stock of the Milton Company as security for the loan which was further guaranteed by the Bell Company. Allen admitted that he could not have obtained the money without the guaranty of the Bell Company.

Allen, the president of the Milton Company, is also president of the North-West Telephone Company. His indebtedness to the Bell Company totals $176,500, of which $87,000 thereof is secured by all of the common stock of the Milton Company and the $89,500 is secured by his common stock in the North-West Company. The indebtedness in connection with the North-West Company was separately considered by the Commission

in Docket No. 3364. We are here concerned only with the $87,000 indebtedness secured by the stock of the Milton Company.

The First Wisconsin Company transferred the Allen indebtedness to an affiliate, the First Wisconsin National Bank. In September, 1934, the First Wisconsin National Bank called upon the Bell Company to pay off the note of Allen which it had guaranteed. This the Bell Company did and on September 20, 1934, received collateral security pledged to the bank. This collateral included 100 per cent of the outstanding capital stock of the Milton Company.

In connection with the acquisition of the Milton Company Allen first borrowed $44,000, on October 30, 1928, from the First Wisconsin Company, which loan was guaranteed by the Bell Company. On November 21, 1928, Allen borrowed an additional $44,000 from the First Wisconsin Company. This loan was likewise guaranteed by the Bell Company. A payment of $1,000 was made on the $88,000 indebtedness, leaving a balance of $87,000 unpaid in September, 1934, at which time the Bell Company paid the First Wisconsin National Bank the $87,000 plus accrued interest and received the collateral, which it still holds. The interest from September, 1934, to May 1, 1937, amounts to $13,920.01. On this interest Allen has paid $7,192.21, leaving a balance due for interest of $6,727.80 plus the principal of $87,000.

The officers and directors of the Milton Company are: John S. Allen, president and director; Emma G. Allen, his wife, vice president and director; Henry G. Allen, his son, secretary-treasurer and director; Gibbs R. Allen, his son, director; and Alma R. Koehler, an employee of Allen's, director.

The Milton Company has a traffic agreement with the Bell Company covering toll messages.

Allen has agreed with the Bell Company to apply all dividends received on the common stock of the North-West Telephone Company and the Milton Company on his indebtedness to it. The promissory note evidencing the indebtedness under which all the stock of this company is pledged to the Bell Company gives it full power and authority to sell, assign, and deliver the collateral at any broker's board, or private sale, without advertisement or notice, or at public sale on such notice as the holder shall determine, and with the right to be purchaser at such sale upon the nonpayment of the liability or at any time after the nonperformance of the conditions of the note or whenever it shall deem the debt insecure before such time.

Allen has paid only $1,000 on the original purchase price of this property, and it is clearly shown that the money with which he purchased the stock of the company was borrowed from the bank under the guaranty of the Bell Company, and that under such guaranty the Bell Company was compelled to pay the bank the amount of the indebtedness together with the accrued interest, and that the Bell still holds Allen's unpaid note evidencing such indebtedness. The principal plus accrued interest to May 1, 1937, aggregates $93,727.80, which is more than the stock cost Allen in 1928.

Allen testified that although the Bell Company does not have an employee

who is an officer or director of the Milton Company, in the matter of the operation of anything in connection with the telephone business of the company, the Bell Company is consulted in the same manner as it is consulted in connection with the business of the North-West Telephone Company, separately considered by this Commission in Docket No. 3364; that "I don't think there has ever been any action taken by the board of directors of the Milton Company but that it was discussed in advance between ourselves and someone in the Wisconsin Telephone Company. This is true in this case the same as in the North-West." Allen's financial transactions with the bank and with the Bell Company relative to the Milton Company have been and are closely interwoven with the dealings with reference to the North-West Telephone Company (Docket No. 3364); that on the matter of operation of anything in connection with the telephone business the Bell Company is consulted. H. G. Nellis, general manager of the North-West Telephone Company, has the same responsibilities with the Milton Company. He is a former employee of the Bell Company and came to the Milton and North-West companies subsequent to the time Bell guaranteed the notes for the purchase price of the Milton Company. He further testified that substantially the same reports are made to the Bell Company as are made relative to the North-West Company, including copy of the balance sheet, the income statement, collection report, station report, etc.

The total operating revenue of the Milton Company for the years 1935 and 1936 were $16,195.01 and $17,656.76, respectively. The total operating expenses for the year 1936 amounted to $12,357.99.

The local manager of the Milton Company was a commission salesman for the Bell Company at the time he was employed as local manager. The North-West Telephone Company audits the books of the Milton Company. It also furnishes the engineering service for which the Milton Company pays $125 per month.

There are no toll switchboards in Milton, the circuits of the Bell Company terminating on jacks on the switchboard of the Milton Company.

[**1, 2**] The basic question here involved is whether the Milton Company is subject to such control by the Wisconsin Telephone Company as was contemplated by Congress in the enactment of § 2 (b) (2) of the Communications Act of 1934. It is clear to us that in the use of the word "control" in § 2 (b) (2) of the act, Congress meant actual as well as legal control and intended the term also to include and mean the power to exercise control either negatively or affirmatively, directly or indirectly. As the court said in construing § 2 (b) (2) in Rochester Teleph. Corp. v. United States (1938) 23 F. Supp. 634, 24 P.U.R.(N.S.) 113, 115:

"It is essential to find what meaning Congress intended by the use of the word 'control' in the statute. The report of the committees of Congress may be consulted to find the congressional intent. Woodward v. De Graffenried (1915) 238 U. S. 284, 59 L. ed. 1310, 35 S. Ct. 764; Lapina v. Williams (1914) 232 U. S. 78, 58 L. ed. 515, 34 S. Ct. 196. *From these reports it is clearly indicated that Con-*

gress intended 'control' as used in the statute to be broadly construed. In House Report 1850, 73 Cong., Second Session, pp. 4, 5, it is stated: 'No attempt is made to define "control," since it is difficult to do this without limiting the meaning of the term in an unfortunate manner. Where reference is made to control the intention is to include actual control as well as what has been called legally enforceable control.'

"Congress has recognized the fact that there are many ways in which actual control may be exerted, such as stock ownership, leasing, contract, and agency. Congress also realized that control may be exercised 'through ownership of a small percentage of the voting stock of the corporation, either by the ownership of such stock alone or through such ownership in combination with other factors.' *Broadly used, 'control' may embrace every form of control, actual or legal, direct or indirect, negative or affirmative.*" (Italics supplied.)

We cannot ignore the fact that the Bell Company has furnished the entire purchase price for the Milton Company. The record affirmatively shows that Allen did not advance any of the money for the purchase of the stock in the Milton Company and now owes to the Bell Company $87,000 plus accrued interest, which represents the purchase price for the company. The Bell Company now has in its possession, endorsed in blank, certificates evidencing all of the stock of the Milton Company, with the right to foreclose its lien thereon at any time.

The Milton Company claims that it is not controlled by the Wisconsin Telephone Company within the meaning of § 2 (b) (2), but contends that it is controlled by John S. Allen, its president, even though all of Allen's stock by means of which it is claimed he controls the company is pledged to the Wisconsin Telephone Company as collateral for a loan on which he has made default and which now totals $93,727.80 with interest from May 1, 1937. The present market value of the stock is not clear. Its par value is $40,000. None of the stock has changed hands since it was purchased by Allen in 1928 for $88,000.

As we pointed out in Docket No. 3364, in the matter of the North-West Telephone Company, decided this date, that the Wisconsin Telephone Company would, under such circumstances, fail to direct the action of Allen and, through him, the affairs of the Milton Company in order to insure protection of its investment, is contrary to common business sense and judgment.

The evidence in this case compels the conclusion that the Wisconsin Telephone Company, through its control over the president of the Milton Company because of his indebtedness to it, unquestionably has the power to and does control the management and operation of the Milton Company.

After a careful consideration of the entire record in this case, including all the evidence introduced at both hearings held therein, the examiner's reports and the exceptions filed thereto by the Milton and Milton Junction Telephone Company and the Public Service Commission of Wisconsin, and the briefs filed herein, the Commission is of the opinion and so finds that the Milton and Milton Junction Telephone Company, being under

such control of the Wisconsin Telephone Company as was contemplated by § 2 (b) (2) of the act, has not sustained its claim for exemption and is, therefore, a wire telephone carrier engaged in interstate and foreign communication through physical connection with a carrier which controls it, and subject to all provisions of the Communications Act of 1934 applicable to wire telephone carriers.

An appropriate order will be entered in accordance herewith.

NOTE: In Re North-West Teleph. Co. (Fed. C. C.) Docket No. 3364, August 2, 1938, the Commission made similar rulings, where a connecting company had advanced funds for acquisition of stock and held in its possession, endorsed in blank, certificates evidencing stock representing approximately 62 per cent of the total voting stock of the intrastate company, with the right to foreclose its lien thereon at any time, and where the other company also held certain stock in its own name.

ARIZONA CORPORATION COMMISSION

Re Nevada Consolidated Copper Corporation

[Docket No. 7487-E-619, Decision No. 9826.]

Public utilities, § 47 — Emergency power service — Declaration as to status.

Declaration was made by the Commission that a copper company, willing to furnish power to the United States government temporarily to relieve a shortage of power from a government dam, should not be considered or regarded by the Commission as a public utility or be subject to order, ruling, or regulation of the Commission as a public utility.

[July 1, 1938.]

APPLICATION *for declaration as to public utility status of industrial company proposing to furnish emergency power to the United States; declaration made.*

By the COMMISSION: The United States of America, in the administration of the San Carlos Irrigation Project on the Gila river in Pinal, Gila, and Graham counties, Arizona, has requested the Nevada Consolidated Copper Corporation, managing agent in Arizona for Kennecott Copper Corporation, to furnish electrical energy from its power plant at Hayden to operate pumps for irrigation purposes within said project, by reason of the shortage of power from Coolidge dam; the United States is unable to

secure such power from any other source, and unless such power is provided by the copper company serious results will accrue to the project during the coming crop season.

It appears that the copper company is willing to furnish such power to the United States, in order to temporarily relieve the situation, at a price of 1 cent per kilowatt hour, metered and delivered at Hayden, Arizona, at 44,000 volts, under the following conditions:

That the supplying of such power is an accommodation to meet an emergency; that the copper company is under no obligation to furnish power, but in the event power is delivered it will give the United States ten days' written notice before ceasing to deliver power except in the event of a breakdown or the inability of the copper company, due to conditions beyond its control, to deliver such power; that the copper company shall be the sole judge as to the amount of power that can be delivered and the time at which deliveries can be made; that the United States is in no way obligated to purchase power from the copper company but will pay for power used to the limit of appropriations available therefor, and will so pay monthly; that the supplying of such power shall be had with the understanding that no obligation shall accrue as against the copper company as a public utility under the laws of this state or of the United States, and that this Commission shall specifically declare that the copper company, by reason of furnishing said power, is in no wise a public utility or engaged in the business of supplying electrical energy for public consumption.

The matter came before the Commission on this day upon the request of the United States through Mr. C. J. Moody, project engineer, to the Commission to make the declaration required by the copper company, and the Commission being advised, and it appearing that under the conditions existing in the San Carlos Irrigation Project an emergency exists and it is necessary for the United States to purchase power from the copper company for pumping purposes, as above outlined,

It is, therefore, *ordered* that if power is so purchased by the United States from the copper company, neither the Nevada Consolidated Copper Corporation, managing agent for the Kennecott Corporation, nor the Kennecott Copper Corporation, the owner of the generating plant at Hayden, shall be considered or regarded by this Commission in any wise as a public utility or a public service corporation, or be subject to any order, ruling, or regulation of the Commission as a public utility or public service corporation.

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

Florida Power & Light Company

v.

City of Miami et al.

[No. 8549.]

(98 F. (2d) 180.)

Courts, § 23 — Decision on contract impairment — Federal case — State decision.

1. Federal courts, in considering the impairment of a contract obligation by a state law contrary to the Federal Constitution, judge independently of the existence, meaning, and violation of the contract, leaning to an agreement with the decisions, if any, of the state supreme court, p. 323.

Courts, § 23 — Decision on state law — Federal case.

2. The powers of a municipality under the Constitution and laws of a state remain a local question on which the state decisions will be accepted by Federal courts as controlling, p. 323.

Rates, § 119 — Powers of municipality — Contract.

3. A general municipal power to contract, coupled with a power to provide electricity for the citizens, may be sufficient to authorize a city to contract for electricity at a stated price for a limited time, p. 323.

Rates, § 110 — Municipal regulation — City commission — Legislative power.

4. A city commission in regulating rates of a public utility, operating under a franchise that fixes rates to a certain extent but subject to the lawful regulatory authority of "the city or state Commission having jurisdiction," performs no proprietary or administrative municipal function but exerts the state's police power and exerts a power fundamentally legislative, p. 323.

Rates, § 230 — Powers of municipal commission — Effect of franchise contract.

5. A city commission having power to regulate rates, in ordering a reduction of rates fixed by a franchise contract which reserves the full exercise of the police power of rate regulation to a city or state Commission having jurisdiction, does not impair the franchise contract but acts within its terms, p. 323.

Rates, § 227 — Effect of franchise — Provision as to rate base and rate of return —Regulation by city commission.

6. The rate base and the rate of return mentioned in a franchise which governs rates but is subject to the regulatory authority of a city commission are not controlling but may be given some weight when the commission exercises such authority, since the commission is not representing the city and its corporate interests under the franchise agreement, but is representing the legislature in rate regulation, p. 325.

Valuation, § 85 — Accrued depreciation — Cost basis.

7. Use of the cost of property without depreciation as the sole standard of present value is unreasonable when the life of some of the equipment is half exhausted, p. 325.

Valuation, § 40 — Rate base — Reproduction cost — Historical cost.

8. Giving controlling weight to reproduction cost less depreciation of what is used and useful in supplying a city with electricity, using historical cost for purposes of corroboration or correction, is not erroneous, p. 325.

Return, § 87 — Electricity — Established business.

9. A return of 7 per cent may be considered reasonable for an established electric business in a large city although 10 per cent fixed by a franchise contract was considered reasonable at a time when locally profits were exceedingly high, p. 325.

Valuation, § 233.1 — Local generating plant or interconnected system — Overbuilding.

10. Rates for electric service where a utility operates under a franchise providing for a local generating plant are properly based upon the value of such a generating plant plus the cost of an additional unit which would make the local plant sufficient, instead of being based upon an allocated part of an interconnecting transmission system optimistically overbuilt and delivering electricity in the municipality at a unit cost greater than if generated locally, p. 325.

Return, § 89 — Electric utility — Confiscation.

11. Confiscation is not shown if the return of an established electric utility operating in a large city is as much as 7 per cent under rates imposed upon it, p. 327.

Procedure, § 33 — Reopening rate case — Additional evidence — Lack of diligence.

12. A court is warranted in refusing to reopen a rate case for the introduction of proof by the public utility company when the company fails in diligence by presenting the evidence only after the decision has been announced, p. 327.

[July 15, 1938.]

APPEAL *from decree dismissing suit by power company to restrain enforcement of city ordinance directing rate reduction; affirmed with directions. For decision below, see 16 P.U.R.(N.S.)159.*

APPEARANCES: John F. MacLane, of New York city, and Jno. P. Stokes and Will M. Preston, both of Miami, Fla., for appellant; Sidney S. Hoehl and J. W. Watson, Jr., both of Miami, Fla., for appellees; Wm. H. Malone, of Miami, Fla., amicus curiæ.

Before Foster, Sibley, and Holmes, Circuit Judges.

SIBLEY, C. J.: This litigation began by Florida Power & Light Company filing on March 15, 1933, a bill to enjoin execution of an ordinance of the city of Miami which fixed rates for electrical service within the city to begin March 24th following, whereby net income would be reduced about $700,000 per annum. The bill claimed that the ordinance, contrary to the Federal Constitution, USCA Const. Art. 1, § 10, cl. 1, impaired the obligation of a contract respecting rates found in § VII of the

franchise ordinance which was passed by the city March 3, 1925, and accepted by Miami Electric Light & Power Company, the grantee, on May 12, 1925. This franchise was assigned to Florida Power & Light Company and the transfer approved by the city early in 1926. The bill also claimed that the new rates were confiscatory under the Fourteenth Amendment, USCA Const. Amend. 14. Preliminary injunction was granted, with bond to repay any unlawful charges collected, which is still in force. A special master made a careful and elaborate report April 4, 1936, recommending the sustaining of the rates and the dismissal of the bill. The district judge corrected the report in some of its details, but upheld it substantially, and on February 18, 1937, gave final decree dismissing the bill but without prejudice to the maintenance of a similar suit in the future if conditions so change as to make the rates confiscatory. It provided for refunds to the customers of excess collections pending the suit. This appeal followed, presenting the general questions as to the validity and impairment of the franchise contract and of confiscation, with numerous minor questions arising out of the claim of confiscation.

[1–3] In considering the impairment of a contract obligation by a state law contrary to the Federal Constitution, the Federal courts judge independently of the existence, meaning, and violation of the contract, leaning to an agreement with the decisions, if any, of the state supreme court. But the powers of a municipality under the Constitution and laws of the state remain a local question on which the state decisions will be accepted as controlling. The Constitution of Florida authorizes the legislature to create cities; and a general municipal power to contract, coupled with a power to provide water or lights for the citizens, may be sufficient to authorize a city to contract for water or lights at a stated price for a limited time. Tampa v. Tampa Water Works Co. (1903) 45 Fla. 600, 34 So. 631, affirmed in (1905) 199 U. S. 241, 50 L. ed. 170, 26 S. Ct. 23; Southern Utilities Co. v. Palatka (1923) 86 Fla. 583, P.U.R.1924C, 428, 99 So. 236, affirmed in 268 U. S. 232, 69 L. ed. 930, P.U.R.1925D, 105, 45 S. Ct. 488. We assume without deciding that the charter of the city of Miami, though it contains no express authority to fix by contract rates or any element of them, empowers the city in granting a franchise (which is expressly authorized), to make stipulations such as are here involved. We pass therefore to a consideration of what was stipulated, and whether the rate regulation of 1933 impairs any contractual obligation.

[4, 5] The Charter, § 3 (k), expressly empowers the city "To establish, impose, and enforce water rates and charges for gas, electricity, and all other public utilities or other service or convenience operated, rendered, or furnished by the city, or by any other person, persons, firm, or corporation." The Florida Constitution, Art. 16, § 30, provides: "The legislature is invested with full power to pass laws . . . to prevent unjust discrimination and excessive charges by persons and corporations engaged as common carriers . . . or performing other services of a public nature." The legislature has passed no law establish-

ing a state Commission to fix or regulate water or electric rates, but has committed the power to various cities, including Miami, and their charter provisions are held to be laws passed under this constitutional provision and therefore an exercise of the state's police power on this subject. See the cases above cited. Against this background of law the franchise here involved was granted by the city. The material provisions of § VII relied on as a contract are set forth in full in the margin.[1] They are peculiar. For five years, expiring in 1930, the grantee is "authorized and empowered to maintain the *same rates* . . . as were in effect on January 1, 1925." Afterwards the rates "shall be such as to yield . . . an annual return equal to *at least* 10 per cent on the contemporaneous rate base." That rate base is to be fixed by adding to an agreed value in 1924 of the property *the total cost* of subsequent extensions and improvements, with no provision for depreciation. If the return in any year proves greater than 10 per cent, one-half of the excess is to be due and payable to the city on March 1st following. Thus after 1930 there is no definite rate established, not even a maximum. The grantee may charge what the traffic will bear, but if it earns more than 10 per cent net according to a stipulated basis of calculation, half of the excess goes to the city, not back to the customers. These may or may not be taxpayers. The city does not in this grant of franchise put itself in the act or atmosphere of fixing rates as an umpire between the company and the consumers, but rather is a sort of profit-sharer in the enterprise to be conducted under the granted franchise. The apparent disregard of the consumers' interests is fully explained by what we now proceed to show, that the opportunity of considering those interests was reserved by reserving the full exercise of the police power of rate regulation when the circumstances should require it. Such a reservation might have been implied from the very nature of that police power and because of its express mention in the Constitution and in the city's charter. But here it is made in the franchise itself. Section VII declares a general purpose to maintain

[1] "Subject to reasonable minimum charges and service guaranties the grantee hereunder is authorized and empowered to establish and maintain the same rates and charges for electric energy furnished during the first five years of the life hereof as were in effect in the city of Miami on January 1, 1925. After the expiration of said 5-year period the grantee's rates and charges for electric service shall be such as to yield and enable the grantee to earn and pay from its electric revenue all the costs of electric service rendered . . . proper reserves . . . replacements and depreciation . . . and an annual return equal to at least 10 per cent on the contemporaneous rate base. . . . Said contemporaneous rate base shall be determined as of any particular time by adding to $4,911,912, being the agreed and approved value of the property used or held for use in rendering electric service on the 31st day of July, 1924, the total cost of all subsequent extensions and improvements thereof and of all property additional thereto constructed or provided from time to time, used or held for use in rendering electric service. . . . Whenever after the expiration of said 5-year period the return earned by the grantee for any calendar year shall be in excess of an annual return as hereinabove defined of 10 per cent, one-half of such excess shall become due and payable to the city and shall be so paid on or before March 1st of the following year. . . . It is the purpose and intent of this provision to maintain as nearly as practicable after the first 5-year period hereof a basis of charge that will yield the cost of service and the 10 per cent return as hereinabove defined and grantee shall from time to time, *subject to the lawful regulatory authority of the city or state Commission having jurisdiction,* adjust its rates for electric service in such a manner and to such an extent as will conform thereto."

after the first 5-year period a basis of charges that will yield a return of 10 per cent, but "subject to the lawful regulatory authority *of the city* or state Commission having jurisdiction." As the law then stood and still stands the regulatory authority is in the city and not in a state Commission. But the matter does not rest there, for § X provides: "This grant shall at all times be subject to the right of the state of Florida, directly or through a Commission or similar body, to regulate rates and service hereunder." The city of Miami is governed by a Commission. Its officers are certainly a body similar to a Commission, and they have been designated by the state as the authority to regulate the rates and service now in question. When they thus act, they perform no proprietary or administrative municipal function, but they exert the state's police power. After a hearing, they make rates which are just according to law both to the public utility company and its patrons, exerting a power fundamentally legislative. Appellant here concedes that had the legislature directly interposed, or had it subsequently to the grant of the franchise (as in the Tampa Case, *supra*) granted regulatory power to the city, the provisions of the franchise would have fallen; but asserts that when the city, already having the regulatory power, contracted about rates, the regulatory power was suspended for the period of the contract; citing St. Cloud Pub. Service Co. v. St. Cloud (1924) 265 U. S. 352, 68 L. ed. 1050, 44 S. Ct. 492. If there be under some circumstances validity in the asserted distinction, there cannot be here, for the power of regulation was not intended to be suspended, but was reserved by express words, whether residing in the legislature, a commission, or other similar body, or in the city itself. When, therefore, after a full hearing the city commissioners made the rate regulation here attacked, they in no wise impaired the franchise contract, but acted within its terms.

[6–10] The major question on confiscation is what property, if any, outside of the city of Miami is to be valued in fixing the rate base. Since the city commission in making the attacked ordinance was not representing the city and its corporate interests under the franchise agreement, but was representing the legislature in rate regulation, the rate base and the rate of return mentioned in the franchise are not controlling, though they may be given some weight in considering what is just and reasonable. The rules and methods generally used are rather to be applied. It would be unreasonable to take as the sole standard of present value cost without depreciation, as the franchise provides, now that the life of some of the equipment must be half exhausted. The master and judge did not err in giving controlling weight to reproduction cost, less depreciation, of what is used and useful in supplying Miami with electricity, using historical cost, so far as it appears, for purposes of corroboration or correction. And a return of 7 per cent may be considered reasonable for an established business in a large city, though 10 per cent was considered reasonable in the earlier stages and in the midst of the Florida boom when locally profits were exceedingly high. As respects the property to be

valued, the city contends that the franchise expressly provided for a generating plant in Miami, as well as a distribution system, and that both were built and still exist sufficient to serve the city, and that nothing besides ought to be valued as used and useful in supplying electricity to the city. The company shows that at the time it acquired the franchise and the property at Miami it was engaged in building a statewide system of transmission lines extending down the east coast from St. Augustine to south of Miami, and from Fort Pierce west to Fort Myers and Bradenton, served by a large generating plant at Fort Lauderdale 25 miles north of Miami, and smaller ones at the north and at the west ends. Since 1927 Miami has been furnished with current from this interconnected system, along with about one hundred and fifty other towns and communities. The current is generated at the three plants last mentioned, that at Fort Lauderdale being the largest, and the generating plants which existed at Miami and other towns are used only for "standby" purposes, that is, to be operated in case of emergency. The appellant contends that since all this property is actually used together, it must all be valued, and an allocation made of a fair part of the value according to the current used at Miami, to be added to the value of the local distribution system, in fixing a base of rates at Miami. The city replies that the general system is not necessary or useful to Miami, but an uneconomical arrangement by the use of which it is sought to put upon users at Miami the support of the service to other communities. The master and judge held that the generating plant at Miami, consisting of three units, was sufficient to supply the needs of Miami under normal conditions, but insufficient if the largest unit should be disabled, and that to render the service safe and "firm" an additional unit could and ought to be added at a cost of $750,000, which would be a sufficient "standby" provision. Since the proportion of the system value sought to be charged in the Miami base was vastly more, it was held just and reasonable to restrict this added value to $750,000. They held that the transmission system was optimistically overbuilt, and that the unit cost of electricity delivered from it is much greater than if generated at Miami, and that the company could not unnecessarily substitute this system for the local generating plant and expect to charge more because of the change. We uphold that view. From a state standpoint, the development undertaken by the transmission system is no doubt desirable, and may deserve some plan of statewide regulation that will support it justly and wisely. But city regulation at Miami cannot effect that. This is not a case where the current at Miami was originally furnished from the transmission system, and a proposal is made by the city to change over to a city generating plant which would operate more cheaply. The case is that the city plant was the original one, and is still maintained in efficiency and daily under steam as a "hot standby," and the company is substituting another and more costly source of electricity. The city users are not bound to suffer by the change under the circumstances thus far appearing. Compare San Diego Land

& Town Co. v. National City (1899) 174 U. S. 739, 758, 43 L. ed. 1154, 19 S. Ct. 804; San Diego Land & Town Co. v. Jasper (1903) 189 U. S. 439, 447, 47 L. ed. 892, 23 S. Ct. 571; Brunswick & T. Water Dist. v. Maine Water Co. (1904) 99 Me. 371, 387, 59 Atl. 537, 543.

[11] The court after correcting some of the master's findings, found a rate base of $9,322,171, and a net income of $831,784 yielding 8.923 per cent. We think the legislative finding made by the city commissioners that 7 per cent is reasonable is not overborne by the opinions of witnesses that 8 per cent is reasonable. Certainly confiscation is not shown if the return is as much as 7 per cent. We have considered all the criticisms of these figures, depending for the most part on a weighing of the evidence and the exercise of judgment, and we see no clear error in any of them. Upon one or more there may be doubt, but to change these would not reduce the return below 7 per cent. Confiscation is not established.

[12] The evidence submitted covered the period prior to June, 1934. The case was argued before and decided by the master and the judge on that evidence as sufficient. The judge announced his decision by a written opinion on October 26, 1936. Pending the preparation of findings of fact and conclusions of law and a formal decree (signed February 17th) on February 12, 1937, the company moved to reopen the case to prove that in 1935 and 1936 there had been a great increase in the peak requirements for electricity in Miami and that it would be still greater in 1937. This evidence would have been material to illustrate the generating plant needs at Miami, and might show that the arrangement to take current from the transmission system is proving wise and necessary. It might for the years named tend to show that a larger proportion of the system value ought to have been allowed. But the failure in diligence in presenting the evidence only after the decision had been announced is so gross that the court was well warranted in refusing to reopen this case. We think, however, that should another bill be filed under the terms of the decree to test the rates for the period since the decree, the inquiry ought to begin from February 17, 1937, and that if begun within sixty days from the filing of our remitter, refunds claimed under the bond given on this appeal should stand in abeyance pending its determination; and it is so *ordered*. With this direction the decree appealed from is

Affirmed.

MINNESOTA RAILROAD AND WAREHOUSE COMMISSION

Re Duluth-Superior Transit Company

[A–4361.]

Rates, § 319.1 — Transit company — School children — Tickets.

A transit company was authorized to substitute identification cards for reduced fares in lieu of nontransferable strip tickets for school children on the ground that limitations on the form of reduced fare were difficult to enforce, that the printing, distribution, and accounting was expensive and complicated, and that issuance of the cards would yield as much revenue but would be a saving to the company and would relieve school authorities of a considerable amount of detail work.

[August 4, 1938.]

APPLICATION *by transit company for permission to substitute identification cards for reduced fares instead of issuing strip tickets to school children; granted.*

I

By the COMMISSION: On July 20, 1938, the above-entitled applicant filed an application with this Commission for permission to change its present method of issuing nontransferable strip tickets in 10-ride quantities to children eighteen years of age and under, as was provided and ordered in Supplemental Order No. A–4361, dated the 13th day of August, A. D. 1929, at St. Paul, Minnesota.

II

That it is the contention of the applicant that the limitations on the form of reduced fare are difficult to enforce; that the printing, distribution, and accounting is expensive and complicated; that the proposed method, to wit: The issuance of identification cards with the privilege of paying a 5-cent cash fare would yield as much revenue as at present but would be a savings to the petitioner as well as relieve the school authorities of a considerable amount of detail work.

III

That the applicant has asserted in its petition acquiescence in the proposed plan by the school authorities in the city of Duluth.

Now, therefore,

It is *ordered,* that the petition of the applicant be and is hereby granted, subject to complaint if any, in that it may substitute identification cards to all school children falling within the age as set forth in Supplemental Order No. A–4361, in lieu of nontransferable strip tickets as heretofore provided for in the above-mentioned order.

It is *further ordered,* that Supplemental Order No. A–4361 is herewith amended to the extent hereinbefore mentioned, and that any provision in Supplemental Order No. A–4361 which is contrary to this order is hereby canceled and annulled, and that all other provisions of Supplemental Order No. A–4361 are in full force and effect as before.

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

ACCEPTANCE!

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Atlantic Refining Co. .....Atreco, Texas	Metropolitan Edison Co. .....Reading, Pa.
Baltimore Transit Co. .....Baltimore, Md.	Municipal Power Plant .....Rochester, Minn.
Bethlehem Steel Co. .....Sparrows Point, Md.	N. Y. State Electric & Gas Co....Dresden, N. Y.
Chain Belt Company .....Milwaukee, Wis.	Ohio Power Co. .....Windsor, W. Va.
Columbia Enameling & Stamping Co., Terre Haute, Ind.	Pennsylvania Electric Co. .....Sewart, Pa.
Container Corporation .....Carthage, Ind.	Ralston Purina Company.....Battle Creek, Mich.
Continental Diamond Fibre Co. ....Newark, N. J.	Republic Oil & Refining Co. ....Texas City, Texas
Crosley Radio Corporation .....Cincinnati, Ohio	Republic Steel Co. .....Thomas, Ala.
Eldora Gold Mines .....Port Hope, Ontario	Rochester & Pittsburgh Coal Co.....Lucerne, Pa.
Elgin, Joliet & Eastern R. R. Co.....Gary, Ind.	Schervier Hospital .....New York City
Formica Insulating Co. .....Cincinnati, Ohio	Sherwood Refining Co. .....Warren, Pa.
Globe Steel Tubes Co. .....Milwaukee, Wis.	Sloan Blabon Co. .....Philadelphia, Pa.
Hamilton Coke & Iron Co. .....Hamilton, Ohio	A. E. Staley Mfg. Co. .....Decatur, Ill.
Helwig Silk Dyeing Co. .....Philadelphia, Pa.	Thilmany Pulp & Paper Co. .....Kaukauna, Wis.
Hudepohl Brewing Co. .....Cincinnati, Ohio	Tide Water Power Co. .....Wilmington, N. C.
Jose Arechabala Socieda .....Cardenas, Cuba	Timken Roller Bearing Co. .....Columbus, Ohio
Kaukau Sugar Co. .....Honolulu, Hawaii	United Refining Co. .....Warren, Pa.
Kendall Refining Co. .....Bradford, Pa.	U. S. Military Academy .....West Point, N. Y.
Keystone Public Service Co. .....Oil City, Pa.	Vacuum Oil Co. .....Paulsboro, N. J.
Latonia Refining Co. .....Latonia, Ky.	Village of Hinsdale .....Hinsdale, Ill.
Lehigh Portland Cement Co. .....Oglesby, Ill.	Washington Gas Light Co.....Washington, D. C.
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Industrial Progress



Selected information about manufacturers, new products, and new methods. Also news on personnel changes, recent and coming events.

Illuminated Glass Blocks Attract Customers

INCREASING attention is being given to the question of what to use in obtaining effective outside display illumination for the modern store.

Among these, illuminated signs are, of course, a complete subject in themselves. Their importance to the modern business establishment can hardly be over-emphasized. Nevertheless, there are other avenues of obtaining effective display illumination, which not only serve to augment the value of the sign, but are also highly successful in adding the correct touch of night-time attractiveness and appeal to the store front.

Glass Blocks, which are so well known for their transmission of light, their insulating qualities, and general good looks, are now receiving well-deserved recognition in another and different capacity, according to the Pittsburgh Plate Glass Company.

Artificial light, projected through their translucent walls is being employed at night to add extra hours to their normally accepted use as a modern store front material. The soft warm glow and sparkle of glass block panels and sections thus illuminated, becomes a surprisingly successful means of attracting and inviting new customers and new business.

Another type of glass product which is both decorative during the daytime and especially effective at night, is Architectural Glass. Its classic shapes and mouldings lend grace and distinction to the many purposes it serves. The possibilities of its uses are just beginning to be realized.

International Harvester Shows New Truck Models

NEW models of International motor trucks for 1939, as shown at the Fifth Annual National Motor Truck Show in New York, included Model D-40, 2 to 3-ton International; 1390 inch wheelbase chassis cab with fifth wheel and Model D-15, conversion type International with Metro double-capacity retail delivery body, as well as other models with special bodies.

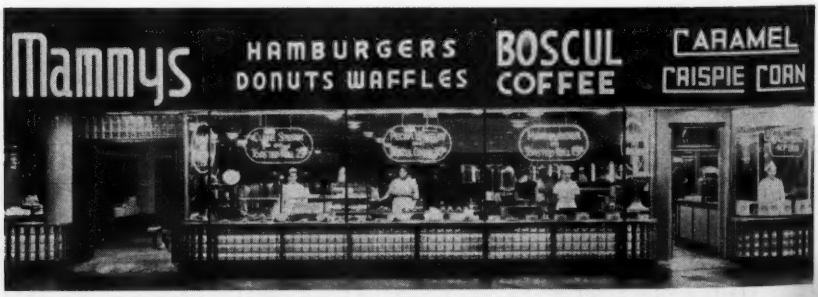
Models DR-50, 3½ to 4½-ton and 4 to 6 ton DR-70 Internationals also were displayed because of the large demand in the East for heavy-duty units of this type. One of these trucks was equipped with a dump body and cab, while the other had chassis and cab only. Both units are equipped with double-reduction herringbone gear drive.

A long wheelbase Model D-346-F exhibit, demonstrating the flexibility of the International six-wheeler driving mechanism was featured.

In addition to the display of new models, the exhibit included three engines cut away to show mechanical features of International construction which contribute to the long life and economy of International trucks. Cut away rear axles of the conventional as well as the two-speed type were shown.

A-C Magnetic Switch

A NEW a-c magnetic switch (CR7006-D51) has been developed by General Electric for full-voltage starting of single-, two-, and three-phase motors. While it is small and com-



PC Glass Blocks in store front construction serve admirably in getting across to the public their cheerful message of invitation, cleanliness and good food.



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FOURTH . . . They prove their time-, labor- and money-saving abilities from the moment of installation.

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More important, however, is the unfailing day in and day out performance of C-B equipment in thousands of installations, and the hearty endorsements of scores of utilities. When you use C-B Service Entrance Equipment, designed to meet the needs of modern distribution systems, you enjoy many continuing profitable advantages, freedom from current diversion and sharply reduced installation costs.

The Corcoran-Brown Technical Staff is available without cost or obligation to assist in the application of C-B Service Entrance Equipment to present or contemplated installations. Details on request.



The widely used C-B 14 meter enclosure, made for outdoor and indoor new sequence metering. Complete details and specifications of all C-B equipment will be found in Bulletins 57, 58A, 60, 61 and 62. Write for copies.

Electrical Department

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pact, it has been designed in full accordance with established standards of electrical clearances, mechanical strength, and ratings. Its principal features, in addition to its small physical dimensions, are its conservative electrical design, long mechanical life, and low maintenance costs over a long period of time.

Basically, the switch consists of a line contactor, with interlock to provide undervoltage protection, and two isothermic temperature overload relays to protect the motor against over-heating. These elements are mounted in a general-purpose sheet-steel enclosing case. The open-type switch is furnished with a rigid mounting plate to permit easy mounting on either an insulating or a conducting panel.

New Line of Motor Trucks Announced by Dodge

THE 1939 line of Dodge trucks, streamlined from bumper to bumper in a refreshing, eye-pleasing style and incorporating advanced engineering features made possible by a giant new truck plant, is announced by Dodge Truck Division of Chrysler Corporation. The new units are being exhibited in all the larger fall shows.

A radically changed grille and a sloping, one piece V-shaped windshield that opens, are front-end changes lending grace and symmetry to the 1939 Dodge trucks. Their distinctive design will prove profitable to users who will discover an excellent advertising medium in the 1939 product.

The new line includes the first Dodge trucks manufactured in the company's plant at Detroit. Constructed at a cost of millions of dollars, it is said to be the most modern exclusive truck factory in the world. The plant is laid out to permit additional engineering and mechanical operations that will provide added quality in Dodge trucks and to assure ideal working conditions for employees.

Another highlight in Dodge's 1939 program is the introduction of a Dodge Diesel truck in the 3-ton line. Decision to enter the oil burning engine field came after 10 years of unpublicized development by Dodge engineers.

This year, Dodge offers new dual-purpose models in 1½-ton heavy duty and 2-ton models for use where unusual flexibility is required. A two-speed axle installed in the Dodge factory and available in two combinations of ratios, gives each model at least 8 speeds forward and 2 in reverse. Ratios are 5.14/7.15 and 5.83/8.1.

In addition to the new streamline styling, new features common to all 1939 Dodge trucks are the following: The cabs are larger and more comfortable; running board splash shields integral with cabs; fully skirted express and panel bodies; increased seat heights; windshields located for improved vision; cab upholstery is blue. Frame siderails will be extended to support a new chanel type bumper without the use of intermediate brackets. This added support is strong enough to serve as an additional frame cross member. Longer life will be added to Dodge truck cabs, bodies and sheet metal because of a new type of stronger steel used in the trucks. This steel has 42,000 pounds per square inch minimum elastic limit.

The Johnston & Jennings Co. Issues Stoker Catalog

THE Johnston & Jennings Company, Cleveland, Ohio, manufacturers of Stowe Stokers, are distributing copies of Catalog No. 11. This book describes the unique features of Stowe Stoker, that keep the fuel bed at even depth side to side and front to rear, permitting very high rates of burning per square foot of grate area . . . and the maintenance of the same hot radiantly bright fuel bed day after day avoiding "fall offs" for cleaning periods, and the necessity of slowing down the feed to burn out "balled up" fires.

The catalog is complete with illustrations of installations, engineering diagrams, case histories, including heat balances, etc. Copies may be obtained from the company on request.

1939 AGAEM Meeting

THE annual convention of the Association of Gas Appliance and Equipment Manufacturers will be held at the Roosevelt Hotel, New York, May 24 to 26, 1939, according to a recent announcement by H. N. Ramsey, chairman of the Time and Place Committee for the convention.

Coggeshall Named Manager of G-E Turbine Division

CLAYTON S. Coggeshall has been appointed manager of the turbine division, central station department of the General Electric Company, succeeding the late Robert B. Beale, according to an announcement by M. O. Troy, commercial vice president.

Mr. Coggeshall had served in the capacity of general assistant to Mr. Beale since March 1st of this year. Prior to that time he was manager of sales of the Lynn River Works turbine section.

Mr. Coggeshall was born in Emeryville, California, and was graduated from Cornell with

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an M. E. degree in 1911. He immediately enrolled in the G-E student engineering course at Schenectady, and became associated with the turbine sales department in 1915. Three years later he was sent to Lynn to take charge of the turbine sales office there.

IBM School Enrolls 1,752

THE International Business Machines Corporation school for employees at its main plant in Endicott, N. Y., started the fall term with 1,752 employees enrolled. The curriculum offers 33 subjects, some of which require as much as four years to complete. Nearly 70 per cent of the employees at the plant have taken one or more courses at the school and nearly 40 percent of them enroll each year for instruction. Instruction and lesson materials are furnished to employees without cost to them.

New Pipe Threaders

THE Ridge Tool Company, Elyria, Ohio, introduces the new RIDGID No. 65R and 85R series of pipe threaders made now of rugged all-steel and malleable alloy construction, with drop-forged hardened tool steel cam plates—said by the manufacturer to give quicker, easier pipe threading. The No. 65R and 85R series thread 4 sizes of pipe, 1″, 1¼″, 1½″ and 2″, all with one set of chaser dies. Only 4 dies—instead of the usual 16, made of semi high-speed tool steel, stay in the threader, saving time and trouble for the operator.

The new No. 65R and 85R series pipe threaders offer a choice of two mistake-proof, practically automatic workholders, a cam type and a plate type. There are no bushings—both types simply set to pipe size and are tightened with one screw. These workholders take 2″ couplings for threading 2″ close nipples. Closed chaser slots on the die face will not stretch.

This manufacturer also has announced a new RIDGID series of poster pipe threaders with all-steel and malleable-alloy construction. Four sets of chasers thread 1″ to 2″ pipe. Full-floating posts are separately replaceable. These threaders also give a choice of cam or plate type workholders, both practically automatic. Chaser dies fit any make of poster threader and all dies of the same number are identical and are interchangeable with any similar number of any other RIDGID Poster set.

New Silex Flasher Display

A NEW flasher display, designed by the Silex Company to make customers stop and look at their product, recently was announced as an additional sales help in the new Silex promotion campaign. The new sign is made of sparkling silver foil, in the shape of a bull's-eye and is printed in red and green ink. Equipped with a flasher bulb, which flicks on and off, the new display piece gives the appearance of motion.

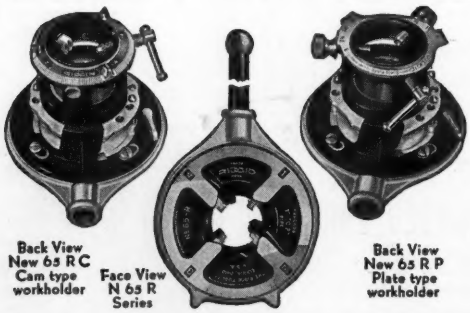
The copy block, short and to the point, lists the outstanding features of the new line of Silex Glass Coffee Makers and ties in with the new advertising theme, "Coffee brewed in a Silex Glass Coffee Maker is free from excess acid."

150-Ampere D-C Arc Welder

A NEW 150-ampere, direct-current, single-operator arc-welding equipment has been announced by General Electric which further extends its line into the field of light-gage work. The new equipment, because of its high, instantaneous recovery of voltage, prevents arc pop-outs at all points in its wide welding range with any good bare, lightly coated, or heavily coated electrode. Its stability prevents excessive current surges, thus avoiding excessive spatter loss and sticking of the electrode.

Any welding current within its entire range can be quickly obtained by means of a three-point selector switch and an easily operated dial for intermediate adjustment. Additional assurance of dependable operation is provided by a reliable means of self-excitation. Isothermic overload protection permits the equipment to carry maximum safe overloads without danger of burnouts and without unnecessary interruptions on harmless overloads.

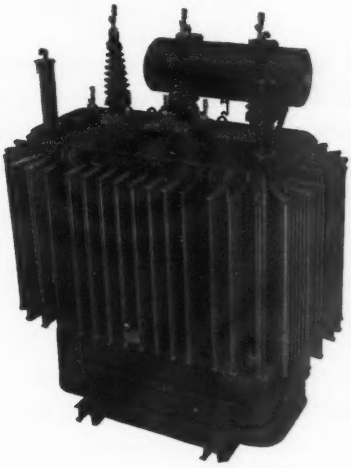
The new d-c equipment is rated 150 amperes at 25 volts and its range of adjustments varies from 20 to 200 amperes at 25 volts.



Pipe threaders of rugged all-steel and malleable alloy construction thread 4 sizes of pipe with one set of chaser dies.

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3

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BECAUSE every factor in the gas industry has looked forward, worked forward, moved forward steadily. The utility companies have brought gas to more and more millions of homes. The range manufacturers have transformed their product, added immeasurably to its appearance and its efficiency. The equipment manufacturers have given their enthusiastic support, supplied mechanical innovations which made rapid progress possible. ⋙ Robertshaw is proud to have had a share in this great promotional movement, to have actively promoted not just heat control but the modern range which it helped to create. The future will bring new opportunities to us all, and Robertshaw will continue to help the industry make the most of them.

The Robertshaw engineering staff stands ready to assist in the working out of any problems which relate to heat control and its effective employment.

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SPOT NEWS OF 1939 GMCs



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12 NEW DIESEL TRUCKS

GMC announces all-new trucks with entirely new and more powerful valve-in-head GMC engines!—GMC introduces new, larger, light-duty cabs with V-windshields!—GMC presents new, roomier bodies—also new, easy-shift SYNCRO-MESH transmission for medium and heavy-duty models, and—

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GMC now offers the most power in trucks!

★ **NEW APPEARANCE**
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★ **NEW C. O. E. MODELS**
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★ **NEW SYNCRO-MESH**
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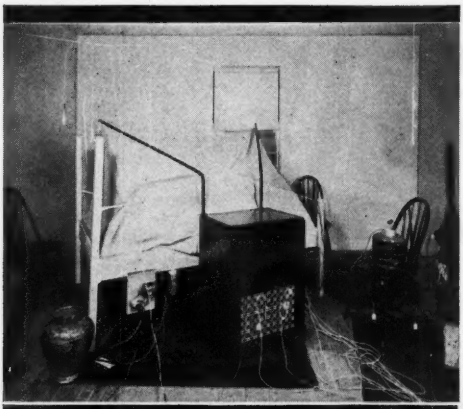
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THE TRUCK OF VALUE

GMC

DIESELS TRUCKS TRAILERS

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Picture of a
MAN IN BED

To test the operation of a bed cooler, Electrical Testing Laboratories found it necessary to approximate the effect of a man sleeping in bed. Hence this apparently complicated arrangement, (pictured above) was set up in a room of our air conditioning test house. By such means, E. T. L. is enabled to secure the Facts on new developments.

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East End Avenue and 79th Street
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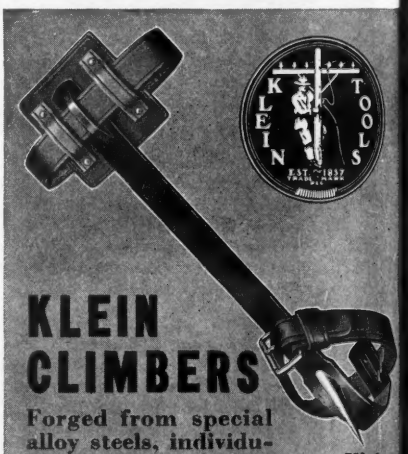
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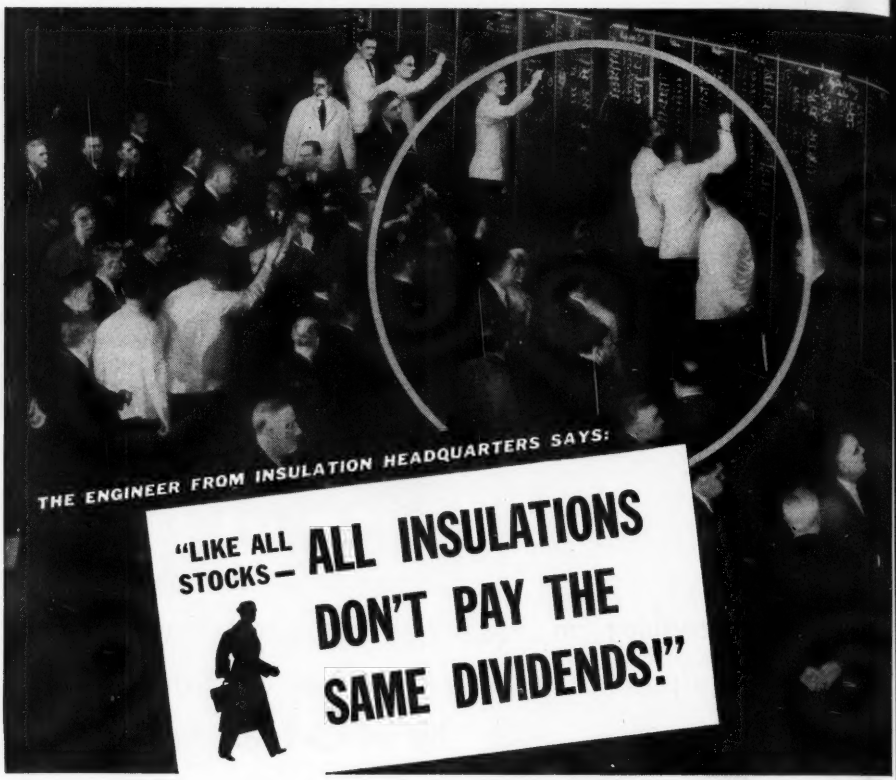


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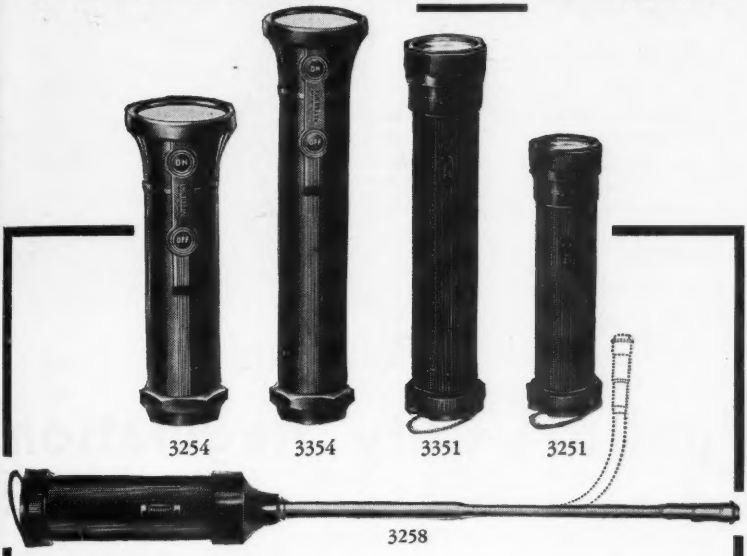
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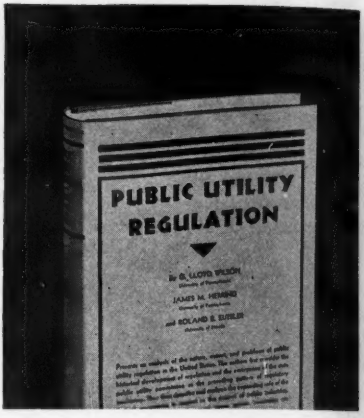
Unit of Union Carbide UCC *and Carbon Corporation*

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5. Rate Regulation
6. The Valuation of Public Utilities
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8. Depreciation
9. Regulation of Service
10. Regulation of Security Issues
11. Regulation of Holding Companies
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13. Regulation of Motor Transportation
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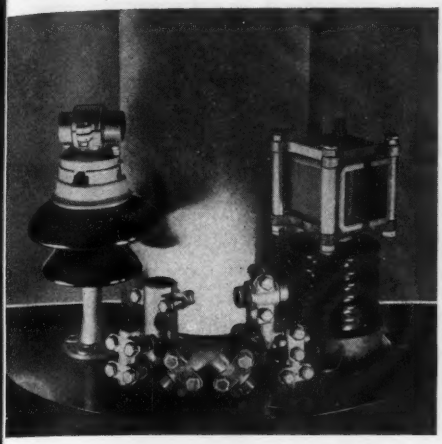
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Sometimes erroneously thought of as merely an incidental part of a substation network, conductor supports and fittings actually form an extremely important part of a system. A failure at any one support or joint is sometimes as costly to the system as the breakdown of a machine. R&IE carefully designed and properly made conductor equipment is the choice of many Utilities where continuity of service is paramount. Tested designs, excellent quality materials, and care in manufacture, form the foundation for the production of R&IE conductor supports and fittings.

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WHEN special characteristics are required in strand, the place to begin is at the open-hearth furnace. The complete integration of all manufacturing operations under Bethlehem's system of control, beginning with steel making and following through all subsequent phases, is an important factor in making strand to meet special conditions.

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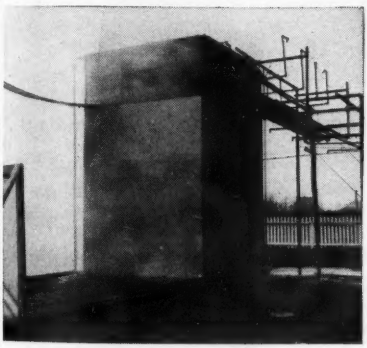
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Five Seconds after water was turned on, "Mulsifyre" system has completely extinguished the fire.

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ROYAL

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WORLD'S NO. 1 TYPEWRITER

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That is what the chief of a great utility wrote to one of his station superintendents. For when the Socony-Vacuum Representative calls on you, he brings to your problems the greatest experience in the oil business. Many operators find this experience helps them to chalk up records for efficiency and economy. Why not make sure to see if our man has something you can turn to your advantage?

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MAKERS OF MOBILGAS, MOBILOIL, GARGOYLE INDUSTRIAL LUBRICANTS

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USERS of Darling Valves and Fire Hydrants have cause to be pleased with Darling dependability. Hard service through the years—without costly repairs—means reduced maintenance costs. Consistent dependability insures economy.

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Representatives in:
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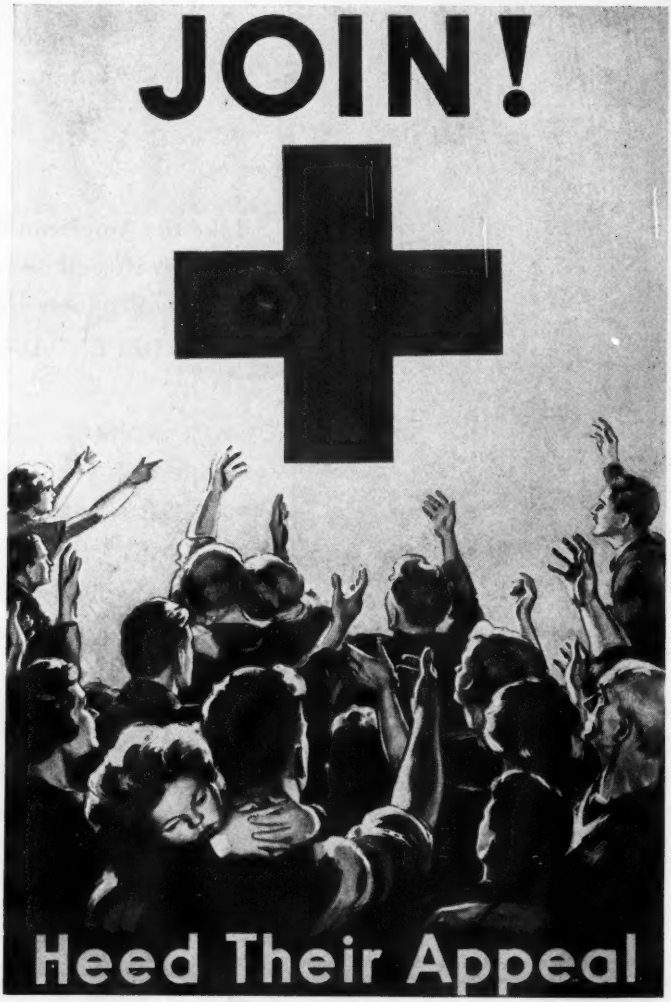
Darling Valves are the choice of those who insist on PERFORMANCE.



The height of the Darling Fire Hydrant can be adjusted to the requirements of each installation. There are many other important advantages.

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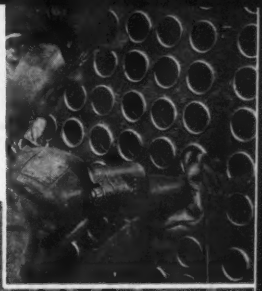
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JOIN!
Heed Their Appeal

ke it from this old timer . . . when he says that

&L SEAMLESS STEEL BOILER TUBES

e, *"The best tubes we have handled in 40 years"*





r. H. Wolford of H. Wolford & Company, Philadelhia, has been repairing boilers for over forty years. ead what he says about J & L Boiler Tubes —

"For many years, we have used one make of Boiler Tube and thought they were best, but just a few weeks ago, we placed through a Philadelphia jobber an order for 192 of your 3" x 18' Seamless Steel Tubes and want to say that these tubes are the best for staying put and turning over that we have handled in forty years. From now on we will handle nothing but J & L Tubes."

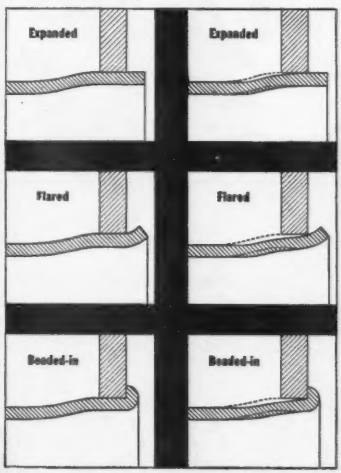
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Why High Ductility is Vitally Important

(a) Jones & Laughlin Seamless Tubes with their high ductility form a smooth, tight joint and "stay put" permanently...when they are expanded, flared and beaded in. See diagrams below.

(b) Tubes not sufficiently ductile resist forming and tend to pull away from the boiler plate. Such tubes require longer time for working and leaveimperfectjoints. See diagrams below.



J & L manufactures a complete line of seamless and welded steel tubular products. This includes seamless pressure tubes, condenser and heat exchanger tubes.

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Flange steel plates and firebox steel.

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AMERICAN IRON AND STEEL WORKS
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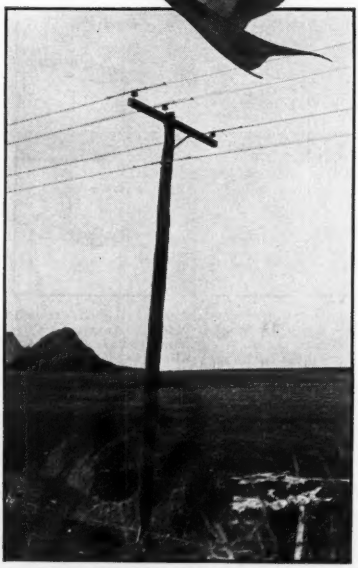
KERS OF HIGH QUALITY IRON AND STEEL PRODUCTS SINCE 1850

J&L—ALWAYS MAKING FINER CARBON STEEL PRODUCTS FOR NEW AND BETTER USES

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"... now he's saggin' by telephone"





"Jim wore hisself out wavin' his arms. Spans got so dang long on these A. C. S. R. lines. So he picked up a couple o' test sets, and now he's saggin' by telephone. Just clips one lead to a conductor, connects the other to ground, and has as smooth a talking circuit as you'd want.

"Man on the winch tightens up or slacks off, exactly as Jim says, and the line's sagged to a gnat's eyebrow when he ties in. You see, it's just as important to sag a line right as it is to have the right conductor."

A. C. S. R. (Aluminum Cable Steel Reinforced) means more than just the name of a conductor. It represents an engineering service which tells you how a conductor should be installed; a system of vibration control that will lengthen the life of any line. Recommendations are based on service records, covering many years and thousands of miles of A. C. S. R. lines.

ALUMINUM COMPANY OF AMERICA, 2134 Gulf Building, Pittsburgh, Pennsylvania.

A·C·S·R

FOR RURAL LINE

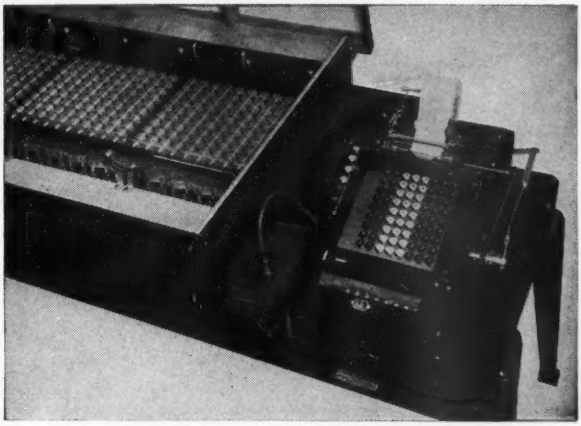
FOR POWER TRANSMISSION

ALCOA

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Rate Changes!

THE ONE-STEP METHOD



OF BILL ANALYSIS

R & S Bill Frequency Analyzer: developed for our Utility Rate Service. The 100 cu. ft. of gas billed are entered on the adding machine. A tape is prepared of all items and a consumption total accumulated, which serves as a control. At the same time—by this single operation—the bill count for each 100 cu. ft. of gas step is made by the electrically controlled registers.

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Estimates promptly submitted. Such marked savings that analyses now can be carried on currently for much less than former cost of periodic studies.

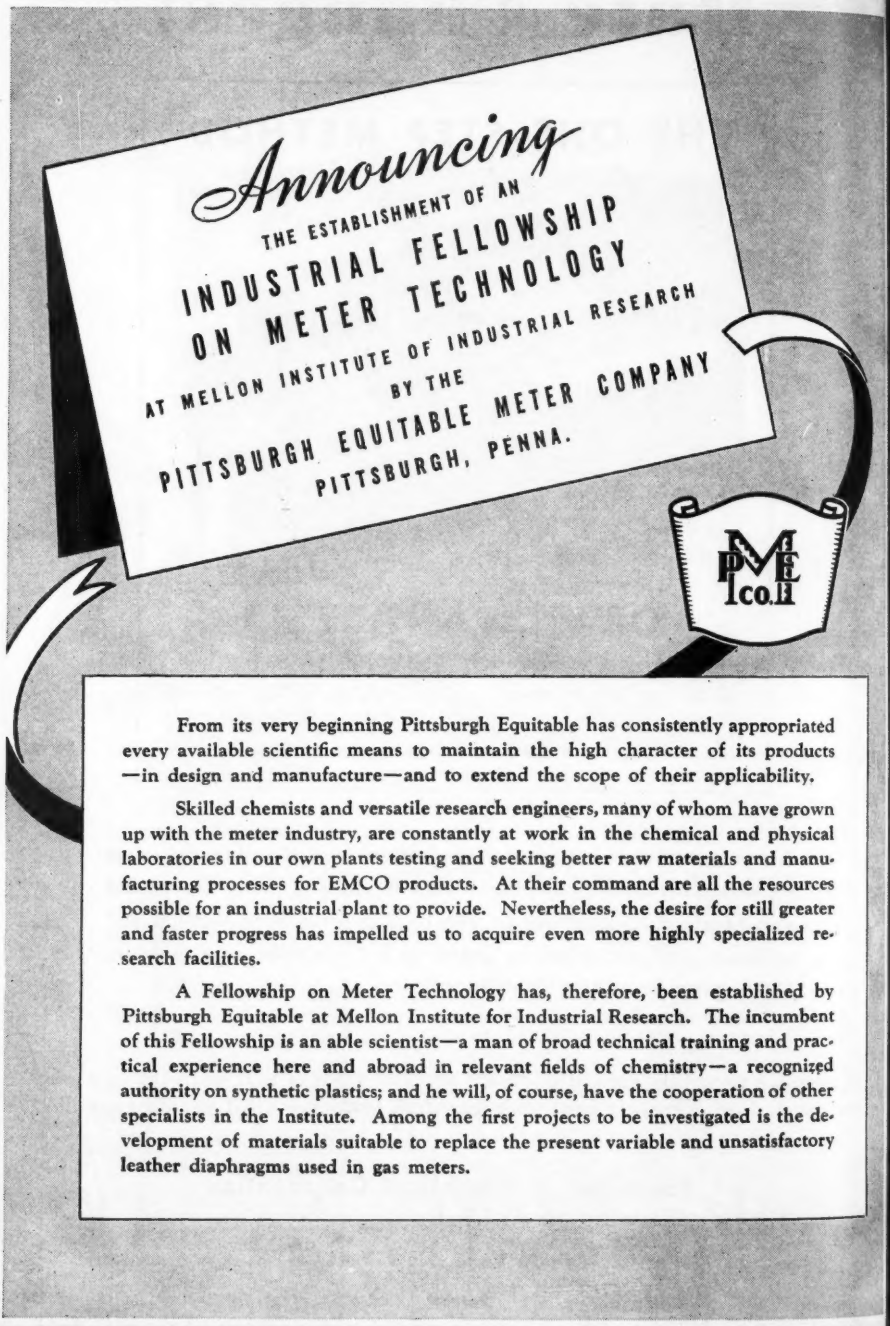
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Utilities Division

102 Maiden Lane, New York, N. Y.

Boston Chicago Detroit Montreal Toronto

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From its very beginning Pittsburgh Equitable has consistently appropriated every available scientific means to maintain the high character of its products —in design and manufacture—and to extend the scope of their applicability.

Skilled chemists and versatile research engineers, many of whom have grown up with the meter industry, are constantly at work in the chemical and physical laboratories in our own plants testing and seeking better raw materials and manufacturing processes for EMCO products. At their command are all the resources possible for an industrial plant to provide. Nevertheless, the desire for still greater and faster progress has impelled us to acquire even more highly specialized research facilities.

A Fellowship on Meter Technology has, therefore, been established by Pittsburgh Equitable at Mellon Institute for Industrial Research. The incumbent of this Fellowship is an able scientist—a man of broad technical training and practical experience here and abroad in relevant fields of chemistry—a recognized authority on synthetic plastics; and he will, of course, have the cooperation of other specialists in the Institute. Among the first projects to be investigated is the development of materials suitable to replace the present variable and unsatisfactory leather diaphragms used in gas meters.

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Transmission line construction costs can be materially reduced and completion expedited by using Hoosier Crews



HOOSIER ENGINEERING COMPANY

CHICAGO — 46 SO. 5TH ST., COLUMBUS, OHIO — NEW YORK

Canadian Hoosier Engineering Company, Ltd.
Montreal

ERECTORS OF TRANSMISSION LINES

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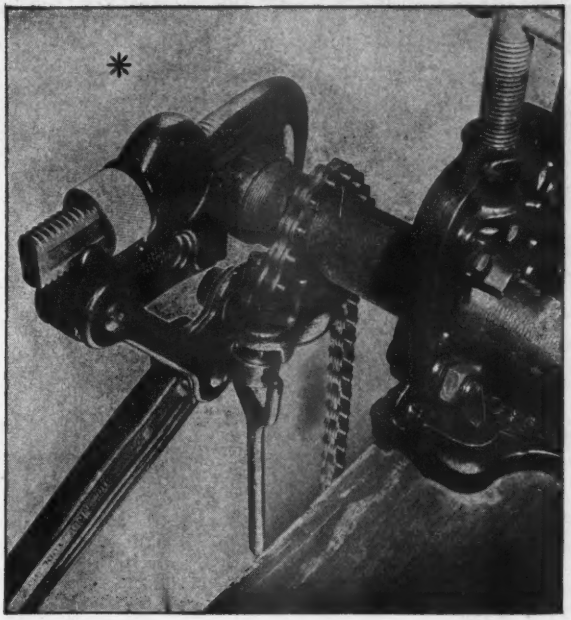
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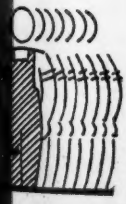


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